

STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF
INVESTIGATION



AGENCY: OHIO DEPARTMENT OF TRANSPORTATION
FILE ID NO.: 2016-CA00014
DATE OF REPORT: APRIL 5, 2018

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

“Safeguarding integrity in state government”

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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: 2016-CA00014

SUBJECT NAME: Brett Shearer

POSITION: Transportation Technician 3

AGENCY: Ohio Department of Transportation

BASIS FOR INVESTIGATION: Complaint

ALLEGATIONS: Operating a Business or Private Interest on State Time

INITIATED: April 7, 2016

DATE OF REPORT: April 5, 2018

INITIAL ALLEGATION AND COMPLAINT SUMMARY

The Office of the Ohio Inspector General received an anonymous complaint alleging possible inappropriate conduct by ODOT Transportation Technician 3 Brett Shearer. The complaint alleged that Shearer was running a business selling nutritional supplements during days and times he was working for the Ohio Department of Transportation (ODOT) and while on ODOT property. Based upon the information provided in the anonymous complaint, an investigation was initiated.

BACKGROUND

Ohio Department of Transportation

The Ohio Department of Transportation is responsible for maintaining the state's system of highways, as well as overseeing the state's rail, aviation and public transportation systems. The department has 12 districts along with a central office located in Columbus, Ohio. The director is appointed by the governor and confirmed by the Ohio Senate. Much of ODOT's funding comes from federal sources, state taxes on motor fuels, and bond revenue.¹

APPLICABLE RULES, POLICIES AND PROCEDURES

ODOT policy 17-015(P), effective November 1, 2015, addresses the subject of ODOT employees who engage in secondary employment at or on ODOT property, and/or who engage in activities for personal profit during days and times when they are paid to work for ODOT, including break times. The following alleged violations of policy 17-015(P) were reviewed during the investigation: 1-(H), Failure to report secondary employment; 4-(E), Misuse of state equipment or property; and 10, Engaging in activities for personal profit during paid work hours, including break times. Investigators confirmed Shearer was trained on ODOT policy 17-015(P) and that he had acknowledged his understanding of the policy in writing on September 29, 2015.²

¹ Source: Biennial budget documents.

² ODOT work rules and discipline policy 17-015(P), Certificate of Information Received.

INVESTIGATIVE SUMMARY

This investigation was initiated due to an anonymous complaint made against ODOT Transportation Technician 3 Brett Shearer alleging he was marketing and selling AdvoCare nutritional supplements during days and times he was at work for ODOT. According to the AdvoCare website, “AdvoCare provides innovative nutritional, weight-management and sports performance products. In addition, the AdvoCare business opportunity empowers individuals to explore their ultimate earning potential.”³ Shearer has worked in the ODOT Office of Real Estate for 28 years and his primary work location is the ODOT central office located in Columbus, Ohio.

During this investigation, numerous co-workers of Shearer were interviewed, and throughout these interviews it was stated that Shearer would discuss AdvoCare supplements with co-workers throughout the workday. Several co-workers said he would generally discuss issues about overall health, and end the conversations with a sales pitch for the purchase of AdvoCare products. The following are summaries of interviews conducted by the Office of the Ohio Inspector General.

Maury Meredith

On Wednesday, September 21, 2016, investigators interviewed Maury Meredith, a non-ODOT contract employee⁴ serving as an IT project manager. Meredith had worked as a contract employee at ODOT since October 2013, and at the time of his interview, was assigned as a project manager in the IT section on the fourth floor of the ODOT central office.

Meredith stated he and Shearer had discussed AdvoCare products, and Shearer began the conversation with a discussion of health and nutrition. Meredith said the conversation occurred earlier in the year, while he was working on an IT project in the Office of Real Estate on the fourth floor of the ODOT central office. Meredith stated that Shearer was very passionate about AdvoCare and was persistent but not overbearing in his sales approach. Meredith said he did purchase a few AdvoCare products so that he could have a friend at Children’s Hospital evaluate

³ <https://www.AdvoCare.com/company/default.aspx>

⁴ Non-ODOT contract employee refers to the fact that he is a long-term temporary employee working on an IT project on behalf of ODOT.

them for safety. Meredith said Shearer wanted him to purchase a starter kit, which he eventually did in August 2016. Meredith stated that was the last purchase he made from Shearer.

Claire Tupper

On Thursday, September 1, 2016, investigators conducted an interview with ODOT Clerk 1 Claire Tupper. Tupper said she worked in the Office of Real Estate with Shearer, and had been employed part-time with ODOT since September 2015. Tupper said Shearer first approached her about AdvoCare shortly after she started working at ODOT, and that she believed the first time he mentioned AdvoCare to her was when he observed her carrying a donut to her workspace. A few months later, Tupper said she agreed to purchase a 10-day AdvoCare plan from Shearer, largely to get Shearer to stop asking her about it. Tupper said she and co-worker Donna Stewart would comment to each other, "Here comes Brett," when he was dropping by their workspace to talk about AdvoCare.

Tupper said she did not recall the exact date of her initial transaction, but believed it occurred in late January or early February of 2016. Tupper said she used a credit card, that Shearer had an iPad with a credit card reader attachment, and the purchase was made in Shearer's workspace at ODOT. Tupper said that the AdvoCare products she purchased during this transaction were later delivered to her home.

Tupper told investigators she had never overheard anything but brief discussions about AdvoCare and all the trips Brett Shearer had been on because of his sales success with the AdvoCare products. Tupper noted that Shearer had worn shirts with the AdvoCare logo to work, generally on Fridays for jeans day, and had also worn AdvoCare rubber wristbands.

Jennifer L. Strawser

On Tuesday, September 20, 2016, investigators interviewed ODOT Senior Financial Analyst Jennifer L. Strawser. Strawser stated she had been employed with ODOT since around September 2014.

Strawser told investigators that she purchased AdvoCare products from Shearer on one occasion, around January 2016. Strawser said she and Shearer first began having discussions about AdvoCare around September 2015, which began as casual conversations in the fourth-floor breakroom. Strawser said Shearer commented that she seemed to “eat healthy” and asked if she took any supplements, which led to brief discussions about the AdvoCare products he used and sold. Strawser said she and Shearer had several discussions about AdvoCare supplements and recalled that Shearer gave her a couple samples of “Spark”⁵ to try. Strawser recalled telling Shearer she had other financial responsibilities coming due and money was going to be a little tight. She said that Shearer then told her about his success with his AdvoCare business and mentioned the possibility of her starting her own AdvoCare business.

Strawser said she eventually purchased a sample box of Spark containing either 20 or 25 packets. Strawser did not recall the exact date of her purchase from Shearer, but when investigators showed her email communications with him, she confirmed it was on January 22, 2016. Strawser said she paid for the purchase using cash and that the transaction took place in Shearer’s cubicle workspace on the fourth floor of ODOT in the Office of Real Estate. Strawser recalled she signed an AdvoCare sales receipt form at the time of the purchase, and that Shearer delivered her purchase to her workspace during ODOT working hours.

Strawser told investigators she got heartburn after using a few of the Spark samples she purchased from Shearer, so she gave the rest away. Strawser said she avoided contact with Shearer as much as possible, since she did not want to purchase additional products, and had difficulty telling him (Shearer) no. Strawser said it was common knowledge that Shearer would give talks in the café to anyone about AdvoCare. Strawser told investigators, “I knew about him before I ever met him [Shearer],” and indicated that he was a persistent sales representative. Strawser added that once when Shearer asked how she liked the Spark, Strawser told him it gave her heartburn, after which Shearer told her about a new digestive enzyme that AdvoCare had available. Strawser said she told Shearer she would think about it and get back to him, which she never did.

⁵ According to the AdvoCare website, Spark is a supplement that delivers energy and enhanced mental focus with 20 vitamins, minerals and nutrients.

Donna Stewart

On Tuesday, September 13, 2016, investigators interviewed ODOT Records Management Supervisor Donna Stewart. Stewart stated she had worked in the Office of Real Estate for 24 years and had been employed with ODOT for approximately 26 years.

Stewart stated she had purchased AdvoCare products from Shearer in the past, after he first began talking to her about the products around the fall of 2013. Stewart said she agreed to a meeting with Shearer during lunch one day in an ODOT conference room, and that he spent the lunch time talking about the AdvoCare program. Stewart stated that Shearer was passionate about selling AdvoCare and she decided to purchase a few of the products, largely to get Shearer to stop asking her about it. Stewart confirmed that she and co-worker Claire Tupper would warn each other, "Here comes Brett," when he was walking by to talk about AdvoCare. Stewart said she and Tupper were in the habit of placing a napkin over any food, particularly sweets, they had in their workspace when he approached so as not to invite a conversation about health and AdvoCare.

Stewart did not recall the exact dates of her purchases from Shearer, but said that AdvoCare products were expensive and she last purchased products during the previous year. Stewart recalled purchasing some powder for joint pain and some pills for energy. Stewart said Shearer occasionally gave her samples of Spark and other products to try. Stewart said she made purchases by paying Shearer using both a credit card and cash, and he delivered the products to her at work. Stewart explained the transactions were conducted during breaks or lunch in Shearer's workspace at ODOT. Stewart noted Shearer had a computer with a "little white swipe thing on it"⁶ that he used for credit card payments.

Stewart said Shearer called her during the period she was purchasing some of the AdvoCare products, to inquire whether she liked them and if she wanted to place additional orders. Stewart noted to investigators that he no longer called her because she made it clear she was no longer interested in AdvoCare products.

⁶ The investigation revealed this was a Square card reader used to make purchases using a credit card.

Sara Pepper

On Wednesday, December 14, 2016, investigators interviewed ODOT Real Estate Administrator Sara Pepper. Pepper stated she had worked as an ODOT real estate administrator since 2012 and had been employed with ODOT District 10 for approximately 12 years.

Pepper told investigators she was currently not a user of AdvoCare products but that she had purchased Spark from Shearer in the past. Pepper stated Shearer first approached her about AdvoCare products in March 2011, while she was in Columbus for a real estate meeting and he joined her for lunch in the ODOT cafeteria. Pepper said during their conversation at lunch, Shearer discussed the benefits of the AdvoCare program and made a sales pitch. Pepper added later she purchased AdvoCare products on-line and had the order shipped to her home. Pepper said she last purchased AdvoCare from Shearer around December 2015. Pepper stated Shearer made phone calls to her after work hours once she purchased the products to inquire whether she liked them.

Heather West

On Tuesday, January 3, 2017, investigators interviewed Heather West, an employee of the Bridge Credit Union.⁷ West stated that she had worked at the Bridge Credit Union since September 2015.

West said she had been a user of AdvoCare products, specifically Spark and a supplement called Catalyst.⁸ West said that she also tried the AdvoCare “10-day cleanse,” which she stopped taking because it made her ill. West told investigators Shearer first approached her about AdvoCare in the spring/summer of 2016 at the ODOT central office. West said that during a casual conversation with Shearer, she had mentioned being tired. West stated she later met Shearer in the ODOT cafeteria where he talked about the benefits of the AdvoCare program and the product discounts available for those who signed up as distributors. West said she signed up as an AdvoCare distributor while meeting with Shearer in the ODOT cafeteria. Shearer used his personal iPad to register her and she provided her credit card information. West said she would

⁷ The Bridge Credit Union is co-located within the ODOT central office, 1980 West Broad Street, Columbus, Ohio.

⁸ According to the AdvoCare website, Catalyst provides a blend of branched-chain amino acids and L-glutamine to fuel muscle-building components.

make her purchases on-line using her own distributor identification, and had the products shipped to her home. West said she believed the last purchase she made from AdvoCare occurred late in 2016, but was uncertain as to the actual date.

West stated that Shearer would text her during the work day, usually between 8:00-9:00 a.m., and made phone calls to her after work hours once she purchased the products to inquire whether she liked them. West told investigators Shearer would also visit her at her work location during his breaks and they would take short walks to talk about AdvoCare. Investigators showed West color photo screen shots taken from the ODOT employee entrance security cameras on August 19, 2016, at 10:41 a.m., and September 1, 2016, at both 10:38 a.m. and 10:46 a.m. West confirmed it was she and Shearer who appeared in the still shots and recalled they were talking about AdvoCare.

West stated Shearer was “very passionate about AdvoCare” and she did feel some pressure from him to purchase the products and sign up as a distributor. West said she considered herself a nice person and had a hard time saying no to him. West noted she was also concerned about upsetting him since he sat on the board of directors for her employer, the Bridge Credit Union. West stated she would sometimes try to avoid contact with Shearer to deter his inquiries about sales.

West stated she stopped using AdvoCare products approximately October 2016 and delayed responding to the text messages from Shearer for several days at a time. West told investigators that Shearer texted her during one work day, saying, “When I ask for 15 minutes, why does it take you three days to get back to me?”

Square Transactions

Investigators learned that Shearer used a credit card reader to complete sales of AdvoCare products. Several witnesses described a credit card reader that was later identified as a Square magstripe credit card reader.⁹ The Office of the Ohio Inspector General issued a subpoena to Square, Inc. on October 25, 2016, for copies of detailed sales transactions for an account in the

⁹ Square, Inc., Square.com

name of Holly Shearer.¹⁰ Square, Inc. responded to the subpoena by sending a spreadsheet with numerous transactions that were made using the Square credit card reader in Holly Shearer's name. The spreadsheet contained basic sales information, such as the dates of transactions, amounts paid, the types of cards used, etc. Also included with the data were GPS coordinates for the location where the AdvoCare sales were transacted. Based upon the GPS coordinates provided, investigators were able to identify the address of the location of the sales.

Investigators were able to locate three transactions that were made on ODOT property located in Columbus, Ohio. One transaction occurred on May 21, 2015. The sale took place at the ODOT central office, was in the amount of \$24.56 using a MasterCard, and occurred at 1:18 p.m. The second transaction occurred on June 22, 2015. The sale took place at the ODOT central office, was in the amount of \$103.26 using a Discover card, and occurred at 11:33 a.m. The third transaction that was identified occurred on February 4, 2016. The sale took place at the ODOT central office, was in the amount of \$103.26 using a MasterCard, and occurred at 1:42 p.m. The money charged in each of these transactions was deposited into a Bridge Credit Union account jointly held by Holly and Brett Shearer. On the three dates of the transactions, Shearer was at work and on ODOT property.

Email

Investigators determined that Shearer was communicating with ODOT employees using his ODOT-issued email address to coordinate the sales and delivery of AdvoCare products. The Office of the Ohio Inspector General requested from the ODOT chief legal counsel and the Ohio Department of Administrative Services (ODAS) Information Technology Department the .pst¹¹ file for Shearer for the period from January 1, 2015, through April 15, 2016. The .pst file was received by investigators on April 25, 2016, and contained 5,153 email files. On April 28, 2016, investigators conducted a keyword search using terms related to Shearer's AdvoCare business, and 30 emails of interest were recovered. On May 5, 2016, further analysis was conducted and 107 additional emails related to Shearer's AdvoCare business were located. In total, 137 emails

¹⁰ Holly Shearer is the wife of Brett Shearer.

¹¹ A personal storage table (.pst) is an open proprietary file format used to store copies of messages, calendar events, and other items within Microsoft software such as Microsoft Outlook.

related to AdvoCare were reviewed by investigators. The following emails are six examples of Shearer's use of his ODOT email account to further his business with AdvoCare.

Email 1 ([Exhibit 1](#))

Email 1 was sent February 18, 2016, from Shearer's ODOT email account to a non-ODOT employee, with a subject line of "Dash Board." The email content was exclusively about AdvoCare and included attachments that could be described as potential and existing customer contact sheets. Many of the names on the multi-page attachments included ODOT employees.

Email 2

Email 2 was sent August 4, 2015, from Shearer's ODOT email account to the Bridge Credit Union with an attachment of an AdvoCare 1099-MISC for 2014. The email attachment showed that Brett Shearer earned \$44,892.21 for his participation in his AdvoCare business for 2014. The purpose of Shearer's email was to provide evidence to the credit union of additional income to support an application for a loan.

Email 3

Email 3 was sent November 13, 2015, from Shearer's ODOT email account to a personal account owned by Shearer. The email included a spreadsheet attachment entitled "List & Follow up.xlsx." The attachment appeared to be a prospective sales list for possible AdvoCare sales, and specified multiple ODOT employees' names and background information on the spreadsheet.

Email 4 ([Exhibit 2](#))

Email 4 was sent June 4, 2015, from Shearer's ODOT email account to ODOT temporary employee Maury Meredith, with a subject line of "Better Health." In this email string, Shearer is requesting time to meet with Meredith to discuss how to obtain better health.

Email 5 ([Exhibit 3](#))

Email 5 was sent January 22, 2016, from Shearer's ODOT email account to ODOT employee Jennifer Blacketer,¹² with a subject line of "Good morning." In the email string, Shearer asked Blacketer for a time she would like to meet him to receive her recent purchase of AdvoCare products.

Email 6

Email 6 was sent April 7, 2016, from Shearer's ODOT email account to his wife Holly Shearer, and has a subject line of "story." This email included an attachment which was a story about Holly Shearer since she became involved as an AdvoCare distributor. Brett Shearer had made suggestions for revisions in red and was sending it back to her for final review and correction. The attachment had been sent to Shearer earlier that day by his wife, which he then edited on his ODOT-issued computer and sent back to his wife so she could make corrections based upon his review.

Bridge Credit Union Financial Records

Records subpoenaed by investigators and received from Square, Inc. listed deposits related to Shearer's accounts with the Bridge Credit Union. On April 28, 2017, the Office of the Ohio Inspector General subpoenaed financial records from the Bridge Credit Union for Brett and Holly Shearer for three different account numbers. Investigators reviewed the credit union records to determine the amount of annual payments deposited into the Bridge Credit Union from AdvoCare to Brett Shearer. Investigators identified approximately two monthly payments received from AdvoCare for Shearer during each month from 2012-2016 and payments made for the first four months of 2017. Shearer's income deposited into the credit union from AdvoCare was: 2012 - \$17,830; 2013 - \$36,850; 2014 - \$44,430¹³; 2015 - \$54,639; 2016 - \$71,018; 2017 (first 4 months) - \$17,435. Investigators were not able to determine exactly how much of this income was generated on ODOT time or property.

¹² Jennifer Blacketer is Shearer's co-worker Jennifer Strawser prior to a name change after marriage.

¹³ Note this amount differs by \$462.00 from the AdvoCare 2014-MISC found on Shearer's ODOT computer. Investigators attempted for eight months to obtain 1099-MISC from AdvoCare but AdvoCare delayed its response, so investigators subpoenaed Bridge Credit Union records in an attempt to gather this information from another source.

Brett Shearer Interview

On May 11, 2017, the Office of the Ohio Inspector General conducted an interview with Brett Shearer. Shearer said he began working for ODOT in January 1989, and had 28½ years of ODOT service towards retirement. Investigators showed Shearer a document with his signature indicating he had received training (**Exhibit 4**) on ODOT work rules and policy 17-015 (P) and Shearer acknowledged having participated in the training. Shearer stated he understood that he was subject to discipline by ODOT if he violated work rules. Shearer also admitted he did not have a secondary employment authorization on file with ODOT as required by policy, but said he had recently filed a request for secondary employment authorization.

Shearer told investigators he did use the Square, Inc. credit card reader and that he had used it for AdvoCare purchases while at work and on ODOT property. Investigators showed Shearer copies of the three transactions made using Square and identified them as purchases made on ODOT property, and Shearer acknowledged that he was at ODOT and working on those dates. Shearer noted that some sales of AdvoCare occurred during his lunch, and he believed selling the products at lunch was permitted. Investigators explained to Shearer that ODOT policy¹⁴ is clear that an employee cannot engage in activities for personal profit during paid work hours, including break times, and while on ODOT property.

Shearer did not dispute that he conducted AdvoCare purchase transactions with ODOT and Bridge Credit Union employees, but stated he could not specifically remember each transaction. Shearer acknowledged he knew each of the individuals who had reported to investigators that they either purchased AdvoCare products or heard an AdvoCare sales pitch from Shearer.

Investigators asked Shearer about the use of his ODOT computer and email account for the support of AdvoCare sales.

Email 1 – Dated February 18, 2016, this email was sent from Shearer’s ODOT computer, with a subject line of “Dash Board.” Shearer acknowledged that the email was sent from his ODOT computer to his home email, and was AdvoCare related.

¹⁴ ODOT policy 17-015(P)(10),(14)

Attached to this email were reports and spreadsheets for AdvoCare. Shearer referred to them as “to do lists.” Shearer acknowledged that many of the names on these documents were ODOT employees.

Email 2 – Dated August 4, 2015, this email was sent from Shearer’s ODOT computer to bmcclure@bridgecu.org. Attached to this email was an AdvoCare 1099-MISC for Shearer for tax year 2014. Shearer said this was probably sent to the credit union regarding a loan.

Email 3 – Dated November 13, 2015, this email was sent from Shearer’s ODOT email account to a personal email account of his wife, with a subject line of “List.” Attached to the email was a prospect list. This list contained 20 names, at least seven of which were ODOT employees. Shearer acknowledged that this was on his computer.

Email 4 – This email string was sent between Shearer’s ODOT email account and ODOT employee Maury Meredith. The email string showed an attempt to set-up a meeting to discuss the subject, “Better Health.” Shearer stated he could not recall the purpose of the meeting.

Email 5 – This email string was sent between Shearer’s ODOT email account and ODOT employee Jennifer Blacketer. The email string was about Blacketer’s purchase of AdvoCare products (“Spark”) that Shearer wanted to deliver to her.

Email 6 – Dated April 7, 2016, this email was sent from Shearer’s ODOT email account to his wife. Attached to the email was a document written by his wife, which he was editing for her. The attachment was entitled, “Life Story Ladies Alive.docx.” Shearer acknowledged that this document was AdvoCare related.

Investigators showed Shearer a photo of himself found on his ODOT-issued computer which depicted him “before” and “after” his use of AdvoCare products. Shearer confirmed that the

photo was of him, that the photo was on his ODOT-issued computer, and that he used it when talking to people about AdvoCare.

Investigators asked Shearer about the dollar amounts calculated by investigators reviewing Bridge Credit Union bank statements to establish an annual income attributable to AdvoCare. Shearer acknowledged that during most months, he would receive two checks from AdvoCare. Shearer confirmed that the figures investigators showed him for each year were very close to what he earned from AdvoCare.

CONCLUSION

The investigation found that Brett Shearer engaged in secondary employment at or on ODOT property and/or engaged in activities for personal profit during paid work hours, including break times. Shearer used ODOT facilities and computer equipment to coordinate the sale of AdvoCare personal fitness products. Investigators determined Shearer contacted ODOT employees during days and times he was working for ODOT to solicit them to purchase his products. Shearer solicited business for his AdvoCare products so often that several employees reported to investigators that if they noticed Shearer approaching, they would leave their work areas to avoid his sales pitch.

Brett Shearer failed to comply with ODOT work rules and policy 17-015(P). The specific ODOT provisions that Shearer violated are subsections 1-(H), Failure to report secondary employment; 4-(E), Misuse of state equipment or property; and 10, Engaging in activities for personal profit during paid work hours, including break times.

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

RECOMMENDATION(S)

The Office of the Ohio Inspector General makes the following recommendation and asks that the director of the Ohio Department of Transportation respond within 60 days with a plan detailing how this recommendation will be implemented. The Ohio Department of Transportation should:

1. Review the conduct of Transportation Technician 3 Brett Shearer to determine if administrative action is warranted.

REFERRAL(S)

This report of investigation will be provided to the Franklin County Prosecuting Attorney's office and the Columbus City Attorney's office for consideration.



STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

NAME OF REPORT: Ohio Department of Transportation

FILE ID #: 2016-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 5, 2018

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