

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

In re: JOHN GRANA) OEIG Case # 08-00871

OEIG FINAL REPORT (REDACTED)

Below is a final summary report from an Executive Inspector General. The General Assembly has directed the Commission to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut its factual allegations or legal conclusions before the Commission.

The Executive Ethics Commission (“Commission”) received a final report from the Governor’s Office of Executive Inspector General (“OEIG”) and a response from the agency in this matter. The Commission redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Governor’s Executive Inspector General and to John Grana at his last known address.

These recipients were given fifteen days to offer suggestions for redaction or provide a response to be made public with the report. Certain information contained in the proposed public response may have been redacted in accordance with the Commission’s determination that it should not be made public. The Commission, having reviewed all suggestions received, makes this document available pursuant to 5 ILCS 430/20-52.

ALLEGATIONS

The Office of Executive Inspector General (“OEIG”) received a complaint alleging Illinois Department of Transportation (“IDOT”) employee John Grana requested and accepted gifts from his subordinates in exchange for granting them preferred work assignments and equipment. The OEIG concludes that this allegation is **FOUNDED**.

In addition, sufficient evidence was adduced during the course of the investigation to conclude Grana misused his state issued email account. It was further discerned during the course of the investigation that the inventory and radio call numbers on Grana’s state-issued vehicle were not regulation size.

EXECUTIVE SUMMARY REPORT

In its investigation, the OEIG interviewed numerous individuals including: [names of employees redacted] and Grana. Documents examined included a copy of an IDOT internal investigation, emails sent and received by Grana from his state issued email account, and photographs taken of both Grana's IDOT issued truck and other IDOT vehicles.

The OEIG legal analysis is based, in part, upon: IDOT Orders 3-1 and 8-2 and The IDOT District 1 Bureau of Operations Maintenance Policy Manual.

Following due investigation, the OEIG issues these findings:

- **FOUNDED** -In violation of IDOT policy, Grana solicited and accepted gifts in such a manner as to create the appearance of a conflict of interest.
- **FOUNDED** In violation of IDOT policy, Grana misused his state issued email account when he utilized the same to view both personal and inappropriate correspondence.
- **FOUNDED** -In violation of IDOT policy, certain IDOT vehicles failed to display inventory and call numbers or possessed numbers too small in size.

RECOMMENDATIONS

Based upon the evidence, the OEIG recommends that Grana be subject to discipline, up to and including discharge, as a result of his participation in creating a conflict of interest and for his misuse of the state email system. Also, given the voiced concerns about the mistreatment of subordinates deemed disloyal by Grana, it is recommended that he be advised against taking any retaliatory actions toward any of his subordinates and that he be reminded of the constraints proffered by the Whistle Blower Protection Article of the State Officials and Employees Ethics Act, specifically as they relate to those individuals identified in this report.¹

It is further recommended that IDOT specify the person(s) and mechanism through which compliance with the vehicle usage code, as it applies to the placement and size of inventory and radio call numbers, is ensured.

SUMMARY OF INVESTIGATION

Grana was promoted to the position of Highway Maintenance Lead Worker at IDOT's Rodenburg Yard in approximately 2004. As a result, he was imbued with the duty to supervise a crew of up to twenty individuals and meted out assignments accordingly. It was suggested by his subordinates that Grana often solicited and accepted gifts in exchange for dispersing preferred tasks to those individuals who provided him with gifts.

GIFTS

¹ 5 ILCS 430, *et seq.*

Over the course of the investigation, the OEIG interviewed fifteen (15) Rodenburg Yard employees who either worked with or were supervised by Grana during his tenure as the Highway Maintenance Lead Worker. Of those individuals, eight (8) claimed that Grana had approached them and bartered better work assignments for personal gifts, while three (3) stated that they had not been personally solicited but admitted hearing rumors of Grana behaving as such. Statements from those 8 mimicked one another as each stated Grana made his "open drawer policy" known and then treated badly those who failed to comply.²

The OEIG spoke with several of Grana's subordinates, including [name and identifying information of employee redacted]. [The employee] stated that he became cognizant of Grana's penchant for rewarding those who gave gifts with better assignments from IDOT employees he described as Grana's "cronies." As a result, [the employee] stated he bought Grana lunch on two occasions and gifted Grana a box of cigars that cost approximately \$50.00 to \$60.00, adding that he did so because "that's the way the game is played." Fed up with the artifice, [the employee] opted not to buy Grana lunch or give him cigars during the 2008 work season. According to [the employee], Grana reacted by giving him a poor employee evaluation and recommending that he not be re-hired as a full-time temporary highway maintainer, the first time Grana had made such an evaluation or recommendation during [the employee's] tenure with the agency. A review of [the employee's] evaluations did show that for years 2005, 2006, and 2007, Grana routinely indicated [the employee's] performance met or exceeded expectations and regularly suggested he be re-hired. Specifically, on his 2007 evaluation, Grana scored [the employee] as "Exceeds Expectations" in each graded category and commented that [the employee]: "exceeded expectations this winter. He is a great asset to our operations and shows initiative." In stark contrast, [the employee's] 2008 evaluation, completed by Grana subsequent to the 2008 work season wherein [the employee] failed to give Grana gifts, noted that [the employee] "needs improvement" in four of the five judged categories, the lowest ranking available.

Similar stories of disparate treatment were recounted by other Rodenburg Yard employees.³ In two separate instances, subordinates of Grana stated they were treated poorly after refusing to purchase breakfast for Grana and that that treatment continued as they were given undesirable assignments and older work equipment. During other interviews, common refrains were credited to Grana including: "if you want a better truck, come into my office and I'll open a drawer" or "my drawer is still empty, I take cash." Even [name of a supervisor], told the OEIG that he remembered IDOT employee [name redacted] commenting that if he [the employee] bought cigars for Grana he might receive better treatment. In response, [the supervisor] claimed that he arranged a meeting with [the employee], Grana, and a Union Steward, and instructed the men to "get along."⁴ Other Rodenburg Yard employees admitted that they gave Grana gifts, including cigars and leather jackets, but stated that the items were not given in return for preferential

² In this instance, an "open drawer policy" is used to define a situation where an individual in a seat of authority offers to confer a benefit upon a subordinate in exchange for that subordinate's willingness to gift something of value.

³ Those employees included: [names of employees redacted].

⁴ [The supervisor] stated that he did not document that conference.

treatment but instead as a result of their personal friendships.⁵ For example, [one employee] admitted to OEIG investigators that he had gifted cigars and a leather jacket to Grana, but stated he never expected anything in exchange, because he considered Grana a friend.⁶ Similarly, [another employee] acknowledged that as a result of his friendship with Grana, they often exchanged cigars and bought lunch for one another. Again, [the other employee] denied earning preferential treatment as a result. Grana agreed with those men, stating during his OEIG interview, that he never solicited meals or cigars in exchange for favored assignments or equipment. However, other employees under Grana's supervision felt those men did receive a benefit, and referred to the individuals as being part of Grana's "clique."⁷

Emails

During the course of the investigation, a Rodenburg Yard employee informed OEIG investigators that he witnessed Grana and [an employee] viewing pictures of naked females and guns on an IDOT computer. As a result, the OEIG reviewed the emails contained in Grana's state issued email account archive and found numerous documents not related to state business. One such email was received and quickly forwarded by Grana on January 27, 2009. That email titled "Fw: CHOOSE!!!" asked males whether they would choose females over cars. In so doing, it presented the reader with alternating images of vehicles and scantily clad women in suggestive poses. In two other emails, both containing sexual innuendo, Grana wrote to [name redacted], a female he described as a friend: "Next time your (*sic.*) going to be by [names redacted] give us a call, I was thinking about you the other day. (I was in the shower) LOL..⁸" and "Hope u r feeling better. I fixed the heater in my truck so we can move that dresser sat. if you want. Just need your address and a naked picture of you.. LOL."⁹ Another grouping of personal emails sent and received by Grana dealt with both the scheduling of poker games and his online "PokerStars" account.

In addition to those correspondences, that were personal and sexual in nature, the OEIG found another that had racial undertones. That message, which was received and forwarded by Grana on February 19, 2009, and was titled "FW: AF1," showed a picture an airplane with the instruction to "Check the tail ID." The tail ID read, "N166ER."

When questioned about the use of his state issued email account, Grana admitted that the emails sent between he and [name redacted] were not work related and that those titled "Fw: Choose" and "FW: AF1" were not acceptable per IDOT computing policy. When asked specifically about his "PokerStars" account, Grana denied ever playing poker online at work, but admitted that PokerStars sent a correspondence to his state issued email account detailing the method by which he could validate his player email account.

⁵ Those employees included [two employees' names redacted].

⁶ [The employee] could not estimate the cost of the gifted cigars, explaining that he often exchanged cigars with Grana. [The employee] did state that he originally purchased the leather jacket for \$300.00, but added that he gave the jacket to Grana after he was unable to sell it at a yard sale for \$30.00.

⁷ Those employees who intimated the discordant treatment [seven employee names redacted].

⁸ Email titled "Next time" sent on Tuesday, January 27, 2009, to [name redacted].

⁹ Email titled "Truck" sent on Monday, February 2, 2009, to [name redacted].

Vehicle Call Numbers

As a Lead Worker, Grana was assigned a State truck. It was alleged during the course of the investigation that the call numbers on that truck were removed and smaller ones added in order to make those numbers more difficult for the public to read. OEIG investigators inspected the vehicle assigned to Grana and spoke to [an employee], on June 18, 2009. In viewing the vehicle, [the employee] confirmed that the inventory numbers on the truck measured only 1.5 inches in height, as opposed to the required 3 inches. In addition, [the employee] noticed that the vehicle was lacking the prescribed radio call numbers, which were required to appear on the rear tailgate and the front of the truck. [The employee] told OEIG investigators that although his section performed inspections of the vehicles twice yearly, the assigned driver bore the burden of ensuring the vehicle was in compliance with directives.

Grana disagreed with [the employee's] assignment of responsibility and suggested that it was the mechanic who had placed the smaller numbers on the truck while waiting for the regulation sized numbers to be shipped from a commercial entity. When OEIG investigators inspected the truck a second time on September 17, 2009, the day they interviewed Grana, the inventory numbers measured the appropriate 3 inches and the radio call number had been added to the tailgate. However, an inventory number that was to be displayed on the hood, above the grill remained absent.

ANALYSIS

I. Conflict of Interest

IDOT Order 3-1, Chapter 15 Section 1, titled "Conflict of Interest" states in part:

- A. Conflict of Interest: It is the responsibility of all Department employees and members of their immediate families to avoid situations involving conflict of interest and the appearance of conflict of interest. A conflict of interest occurs when an employee's private interest, usually of a personal, financial or beneficial nature, conflicts with public duties or responsibilities. Such a conflict exists when an employee or an employee's family shares an investment, partnership, employment, other relationship or interest which might interfere with the employee's ability to exercise independent judgment in the Department's best interest...
- B. Policy Guidelines: It is essential that Department employees maintain unusually high standards of honesty, integrity, impartiality and conduct in order to avoid conflicts of interest and ensure the proper performance of Department business and the citizens' confidence in their state

government.

1. A real or apparent conflict of interest may arise from, but is not limited to situations where employees:
 - k) Directly or indirectly solicit, accept, or agree to accept for the employee or other person anything of value to influence the employee's job performance or to create an opportunity to defraud the state;

By soliciting and accepting items of value from subordinates in exchange for what were deemed better job assignments and work equipment, Grana has violated the above policies. In numerous interviews conducted by the OEIG, Grana's subordinates noted the "open drawer" principle maintained by Grana and expounded on situations where their refusal to participate ultimately lead to negative job ramifications. In two instances, the repudiation of Grana's demand that subordinates purchase his meal allegedly led to the men being mistreated by Grana. More egregiously, the failure of one employee to continue his participation in the open drawer scheme seemingly resulted in his lowered evaluation and a recommendation that he not be rehired by IDOT, this after Grana had awarded the employee three years of above average evaluations. Such gift garnering by Grana evidenced the interference of his personal interests with his ability to exercise independent judgment in IDOT's best interest, and thus constituted at least the appearance of a conflict of interest.

Grana denied those accusations and claimed that in instances where he did accept gifts—i.e. a leather jacket or cigars—it was due to his friendship with the employees and he was not persuaded to preferably treat those individuals. Even taken as true, that claim does not negate Grana's culpability, as the above policy prohibits even the appearance of a conflict of interest. In interviews with 8 IDOT employees who either worked with or for Grana, each verbalized their belief that those who gave gifts were able to influence Grana's job performance, in as much as the men received better equipment or work assignments. This shared belief minimally evidenced the appearance of a conflict of interest and called into question Grana's honesty, integrity and impartiality. Thus, the allegation that Grana improperly solicited and accepted gifts from his subordinates in exchange for better work assignments and equipment is FOUNDED.

II. Misuse of State Email

IDOT Order 8-2, titled "Information Technology Resources Usage Code" states III pertinent part:

D. Communication

2) Email

The use of department e-mail is limited to official business. Other use of

Department e-mail will be considered reasonable if:

- it does not adversely affect the performance of official duties by the employee or the employee's organization, and;
- it is of reasonable duration and frequency.

Users must keep in mind that e-mail messages can, at any time be entered into public domain by news media and Internet postings. If publishing an e-mail message would harm or embarrass the department or any department personnel then the message should not be sent.

E-mail messages containing chain letters, cartoons, games, non-work related photographs and advertisements for non-work related functions or events are not considered reasonable use of the e-mail system...

Users are responsible for:

- exercising professionalism in all e-mail correspondence;
- ensuring e-mail messages do not contain language or references that is or would be perceived by a reasonable person to be offensive or harassing, including but not limited to; disparagement of others based on their race, national origin, sex, sexual orientation, age, ability, religion, political beliefs, etc. This is strictly prohibited and the employee will be subject to appropriate disciplinary action, up to and including discharge; and ...

By utilizing his state email account to send and receive transmissions—personal, sexual, and racist in nature—Grana acted in contravention of the above referenced policy. Subsequent to acquiring information that Grana had viewed images of naked women and guns on a state computer, the OEIG reviewed Grana's state issued email account and found that he had indeed sent and received inappropriate emails. In one such message, numerous images of scantily clad women in lascivious poses was received and forwarded. Such an email was not professional and could harm or embarrass the department if entered into the public domain. A second email inappropriately referenced the word "nigger." Not only was that email unprofessional but it would be perceived as offensive to a reasonable person. When confronted with those two correspondences during his interview, Grana admitted that they were not acceptable per IDOT computing policy. As such, the allegation that Grana used his state issued email account in violation of IDOT policy is **FOUNDED**.

III. Vehicle Numbers

IDOT Order 3-1, Chapter 14, Section 1, titled "Vehicle Operation and Licensure" states in part that: "Employees are required to operate vehicles within the law and in accordance with Departmental Policy." The Illinois Department of Transportation District 1 Bureau of

Operations Maintenance Policy Manual, Chapter 7, states in part:

7-400.2 Inventory Numbers

Inventory numbers shall be applied to all trucks. The numbers, including the "T" prefix, shall be 75-millimeter (3-inch) decals, in the same gloss blue color as the door logo and shall be applied ahead of the windshield area on the left and right sides of the vehicle hood.

7-400.3.2 Pickup Trucks

Radio call numbers shall be displayed on the tailgate (top, rear driver's side) and hood (top surface, front driver's side). The numbers shall be 75-millimeter (3inch) decals, in the same gloss blue color as the door logo.

It was suggested during the course of the investigation that Grana had removed the regulation sized inventory and radio call numbers from his state issued vehicle and replaced them with smaller decals, as a result, making them more difficult for the public to read. Upon visiting the Rodenburg Yard on June 18, 2009, OEIG investigators and [name redacted] confirmed that the inventory numbers on the truck measured only 1.5 inches in height and that the truck lacked the necessary radio call numbers. When confronted with that information, Grana laid the blame with IDOT mechanics, saying they had placed the smaller numbers on the truck while awaiting the arrival of the ordered regulation-sized numbers. Subsequent to that statement, OEIG investigators again examined Grana's truck, and that time noticed that the numbers measured the appropriate 3 inches and the radio call numbers had been added to the tailgate. Because of the disagreement between Grana, who placed the onus of ensuring that vehicle decals are appropriate in size with yard maintenance and, [name redacted], who stated the burden rested with the assigned driver, the OEIG was unable to conclude who remained liable for the confused number size and missing stickers. Thus, while the OEIG does find sufficient evidence of a policy violation, it does not suggest a perpetrator, and instead recommends that IDOT specify with whom the responsibility lies and identify a process through which all state vehicles are reviewed for compliance, as other vehicles inspected by the OEIG were also found to be in violation of the above policy.

CONCLUSION AND RECOMMENDATION

- » **FOUNDED** -In violation of IDOT policy, Grana solicited and accepted gifts in such a manner as to create the appearance of a conflict of interest.
- » **FOUNDED** -In violation of IDOT policy, Grana misused his state issued email account when he utilized the same to view both personal and inappropriate correspondence.
- » **FOUNDED** In violation of IDOT policy, certain IDOT vehicles failed to display inventory and call numbers or possessed number too small in size.

Based upon the evidence, the OEIG recommends that Grana be subject to discipline, up to and including discharge, as a result of his participation in creating a conflict of interest and for his misuse of the state email system. Also, given the voiced concerns about the mistreatment of subordinates deemed disloyal by Grana, it is recommended that he be advised against taking any retaliatory actions toward any of his subordinates and that he be reminded of the constraints proffered by the Whistle Blower Protection Article of the States Officials and Employees Ethics Act, specifically as they relate to those individuals identified in this report.¹⁰

It is further recommended that IDOT specify the person(s) and mechanism through which compliance with the vehicle usage code, as it applies to the placement and size of inventory and radio call numbers, is ensured.

¹⁰ 5 ILCS 430, *et seq.*



Illinois Department of Transportation

Office of Quality Compliance & Review
201 West Center Court / Schaumburg, Illinois 60196-1096

March 15, 2010

Mr. James A. Wright
Executive Inspector General
Office of Executive Inspector General
32 West Randolph Street
Suite 1900
Chicago, Illinois 60601
Attn: Sydney R. Roberts, First Deputy Inspector General

Subject: OEIG Complaint # 08-00871

Dear Mr. Wright:

This letter is in response to your January 15, 2010 letter regarding case number 08-00871 in which you requested that we report to you the actions that we have taken in response to your recommendations. Please note that the pre-disciplinary hearing will be held on March 19, 2010 at 9 a.m. The statement of charges will include the following:

- Unethical Conduct
- Conflict of Interest
- Misuse of State Time/Equipment
- Violation of Departmental Order 8-2

Please note – this response is being provide this date in compliance with the extension of time granted by your office.

If you have any questions, or if I can be of further assistance to you or your staff, please do not hesitate to contact me at

Respectfully,

A handwritten signature in black ink, appearing to read 'Dan Kennelly'.

Daniel J. Kennelly
Director

cc: Secretary Gary Hannig, IDOT
Millicent Willis, OEIG
Deborah Ellis, OEIG
James bonk, OEIG
Chief Counsel Ellen Schanzle-Haskins, IDOT

IN REBUTTAL

CASE NO. 08-00871

RE: JOHN GRANA

REBUTTAL IN SUMMARY

In review of all allegations made, the common thread is that all allegations are hearsay and unfounded. The interviewed employees all tell different stories and experiences as related to these matters. In sum:

▶ I solicited no gifts, favors or special treatment from any IDOT employees, contract employees or associated relatives at any time creating a conflict of interest between myself and IDOT.

▶ On occasion I used state e-mail accounts to check my IDOT e-mail account and to send e-mails that were not work related on a very infrequent basis.

▶ As allegations relate to the failure to display inventory, call numbers and possess numbers in a size acceptable to IDOT, I am not responsible to choose and/or affix lettering, stickers or numbers to the IDOT vehicles.

EXPLANATION

I strongly deny all allegations made by the individuals interviewed and I view the allegations as vindictive and slanderous. As to the alleging parties:

[redacted]

[redacted]

► I rarely used state e-mail accounts to check my IDOT e-mail account and send e-mails that were not work related on a very infrequent basis.

EXPLANATION

In the past five years, I have often allowed Heavy Construction Equipment Operators and Highway Maintainers to use the computer in my office under my user domain. I was under the impression that these employees were checking their pay stubs and time off sheets. Some of the documents produced by the investigator were not documents viewed by myself. I was not aware that this computer usage was not work related.

▶ As allegations relate to the failure to display inventory, call numbers and possess numbers in a size acceptable to IDOT, I am not responsible to choose and/or affix lettering, stickers or numbers to the IDOT vehicles.

EXPLANATION

On June 18, 2009, an investigator came to the yard to investigate my IDOT assigned vehicle identification numbers. I was on vacation that week and was not aware if my IDOT assigned vehicle's identification numbers were not in compliance or were altered in any way. When I returned from vacation, all identification numbers were in compliance with the exception of the radio call numbers located on the hood of the vehicle. The investigator returned on September 17, 2009 and determined that the vehicle was in compliance with IDOT guidelines with the exception of radio call numbers that should be displayed on the front edge of the hood of the vehicle. These numbers were on order from the Elgin Sign Shop Facility and were applied by the mechanic as soon as they were received. As stated in the OEIG's investigative report dated September 22, 2009, there was another vehicle that had identification numbers that were not in compliance with IDOT guidelines. I am not responsible to choose and/or affix lettering, stickers or numbers to the IDOT vehicles.

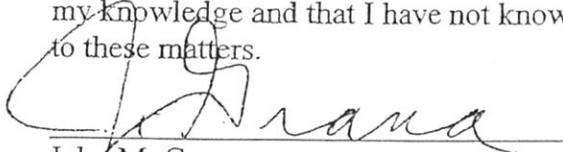
SUMMARY

The allegations put forth are unfounded and based in sour grapes, animosity and jealousy and reflect the opinions of only a small minority of the employees in my yard. Their statements are strictly hearsay and are unreliable. As indicated by [redacted]

, I never asked for or received any gifts, favors or payment in return for preferential treatment. As mentioned individually above, each person making the allegations is personally motivated to have me fired.

It would be unjust to discipline to have me fired on the basis of the above mentioned person's allegations and I ask that you find these allegations to be unfounded and unreasonable.

I attest that the above said statements that I have made are true and correct to the best of my knowledge and that I have not knowing omitted any pertinent information as it relates to these matters.


John M. Grana

3/30/10
Dated