



INVESTIGATIVE REPORT

David Cook, Inspector General

OFFICE: INDIANA CIVIL RIGHTS COMMISSION (ICRC)
TITLE: ICRC CORRECTIVE ACTION PLAN FOLLOW-UP
CASE ID: 2022-11-0329
DATE: April 25, 2023

Indiana Office of Inspector General Chief Legal Counsel, Tiffany Mulligan, after an investigation by Inspector General Special Agent Charles Coffin, reports as follows:

The Indiana General Assembly charged the Office of the Indiana Inspector General (OIG) with addressing fraud, waste, abuse and wrongdoing in the executive branch agencies of state government. Ind. Code §4-2-7-2(b). The OIG also investigates allegations of criminal activity and Code of Ethics (Code)¹ violations within state government. Ind. Code §4-2-7-3. The OIG may recommend policies and carry out other activities designed to deter, detect and eradicate fraud, waste, abuse, mismanagement and misconduct in state government. Ind. Code §4-2-7-3(2). As part of its oversight mission, the OIG may conduct a follow-up investigation to determine whether an agency has implemented the OIG's recommendations or Corrective Action Plan that resulted from an OIG investigation.

I. Background

On August 12, 2021, the OIG issued a Confidential Inspector General Report (Report)² to the Indiana Civil Rights Commission (ICRC) regarding OIG investigation 2019-07-0182 (OIG

¹ The Code is found in Ind. Code 4-2-6 and 42 IAC 1.

² The OIG maintains the Report as a confidential investigative record pursuant to Ind. Code §4-2-7-8.

Investigation). As part of the OIG Investigation, OIG Special Agent Charles Coffin investigated multiple complaints that the OIG received involving ICRC employees. The complaints made several allegations, including: ICRC staff and commissioners³ failed to follow state and federal requirements on contracts and grants, two ICRC staff members had conflicts of interests due to their outside professional activities and several ICRC staff members received personal benefits because of ICRC's sponsorship of certain events, such as entertainment and sporting events. The complaints also alleged a lack of transparency in how ICRC distributed tickets received due to ICRC's sponsorship of certain events.

After a thorough and lengthy investigation, the OIG found no evidence that any ICRC employee or special state appointee engaged in any criminal activity; however, the OIG Investigation revealed concerns regarding ICRC's contracting, procurement and grant administration practices. The OIG Investigation also found ICRC had difficulty providing detailed and consistent information regarding some of ICRC's contracts and revealed a failure to document ICRC activities under its contracts and grants. The OIG Investigation further found that ICRC participated in several sponsorship agreements in which it received tickets to popular cultural, entertainment and sporting events. ICRC failed to document who made decisions regarding these tickets, how these decisions were made or who ultimately received these tickets.

In addition, the OIG Investigation found that an ICRC employee (Employee) likely violated Ind Code §4-2-6-9, the Code's conflict of interests related to decisions and voting rule because of the Employee's outside service on a non-profit organization's (Organization) board of directors. ICRC had a history of providing state funds to the Organization, both before and after

³ ICRC provides staffing for several state cultural commissions, including the Indiana Commission for Women, Indiana Commission on the Social Status of Black Males and the Indiana Native American Indiana Affairs Commission. When this Report refers to commissioners, it means members of the ICRC Commission or one of the cultural commissions that ICRC supports.

the Employee was in a position at ICRC to direct such funds. Ind. Code §4-2-6-9 prohibits a state employee from participating in any decision or vote, or matter related to a decision or vote, if the employee knows that a business organization in which he or she serves as “an officer, director, a member, a trustee, a partner, or an employee” has a financial interest in the decision or vote. The statute requires a state employee who identifies a potential conflict of interests to notify the employee’s appointing authority and ethics officer in writing and either seek a Formal Advisory Opinion from the State Ethics Commission (SEC) or file a written disclosure statement with the SEC. Although the Employee was in a position to participate in decisions at ICRC that would financially impact the Organization, the Employee did not seek a Formal Advisory Opinion or file a written disclosure statement with the SEC as required by the statute.

Although the OIG found that the Employee likely violated Ind. Code §4-2-6-9, the OIG declined to file a complaint with the SEC against the Employee for a variety of reasons. First, ICRC has a long-standing relationship with the Organization that predated the Employee’s employment with ICRC. Also, ICRC’s and the Organization’s missions are aligned, and it is likely that ICRC would have continued supporting the Organization, even without the Employee’s involvement. Second, the Employee sought advice from the OIG on his outside professional activity. Although he did not take all the steps needed to comply with the rule, he made efforts to disclose his outside activity to the OIG. Finally, the Employee no longer serves on the Organization’s board. As a result, the Employee’s potential conflict of interests has ended. For these reasons, the OIG closed its investigation.

Although the OIG closed its investigation, on August 12, 2021, the OIG issued the Report to the ICRC, which included seven recommendations to help ICRC prevent the types of issues identified in the Report from occurring in the future. Due to the serious nature of the concerns

identified in the OIG Investigation, the OIG also asked ICRC to submit a Corrective Action Plan (CAP), outlining what actions ICRC planned to take in response to the seven recommendations in the Report and by what date ICRC would implement the actions in ICRC's CAP. The OIG asked that ICRC submit the CAP within sixty days of receipt of the Report.

ICRC submitted a response to the Report on October 7, 2021.⁴ The response provided proposed policies for ICRC to address the findings of the Report. ICRC also attached relevant material in its response, such as the documents the CAP reported would be provided to ICRC staff.

In summary, the seven recommendations the OIG made to ICRC in the OIG Report followed by the proposed actions ICRC included in its CAP are as follows:

1. **OIG REPORT:** ICRC should ensure all staff members responsible for contracting and procurement receive training on how to process state contracts and that all staff members involved in administering federal grants fully understand the grant's requirements and restrictions.

ICRC CAP: Regarding state procurement requirements, all ICRC executive staff will review materials from the 2019 State Contract Seminar, IDOA's 2021 Professional Services Contract Manual, the Supplier Contract Management (SCM) Financials Procedure Overview, How to Create Requisitions and Request for Special Procurement. Regarding federal procurement requirements, all ICRC executive staff will review the 2021 U.S. Housing and Urban Development (HUD) Funding Guidance for Fair Housing Assistance Programs, HUD Legal Memo Concerning the Transition to 2 CFR Part 200 and a copy of 2 CFR Part 200. All ICRC executive staff will complete HUD training, titled 2 CFR Part 200 Module.⁵

⁴ The response was in the form of a memo dated September 15, 2021.

⁵ See [Financial Management 201: A Closer Look - HUD Exchange](#).

2. **OIG REPORT:** ICRC should remind all its employees and special state appointees who serve on a Board of Directors for an outside for-profit or non-profit organization to disclose their board membership to the OIG or ICRC's Ethics Officer, especially when the board's mission aligns with ICRC's mission. The OIG or ICRC's Ethics Officer can help advise the employee on whether the board membership raises potential conflicts of interests under the Code. The OIG or ICRC's Ethics Officer also can advise the employee or special state appointee on whether he or she should request a formal advisory opinion from or file a disclosure statement with the SEC.

ICRC CAP: ICRC Commission members and executive staff will be provided with an ethics summary that outlines the State's ethics laws and regulations and when special state appointees and/or agency staff should contact the Ethics Officer or the OIG. ICRC's Ethics Officer will give a presentation to all Commissions to which ICRC provides staffing support, as well as to all ICRC staff, annually.

3. **OIG REPORT:** The appointing authority and executive staff of an agency who make or participate in decisions regarding where the agency will direct funding should not serve on the board of an organization receiving or applying for funds from that agency. Where there is a benefit to the state agency and outside organization, the state employees and special state appointees involved must adhere to the ethics rules related to disclosure and create reviewable records to evidence the integrity in the funding decision process.

ICRC CAP: ICRC will seek formal and/or informal advisory opinions from the OIG when an ICRC staff member or Commission member identifies any possible conflict of interests. Further, if an ICRC staff member or Commission member identifies a conflict of interests and recuses himself or herself from any discussion,

decision or vote concerning the conflict, ICRC's Ethics Officer will prepare and file the appropriate disclosure statement and supporting materials with the OIG.

4. **OIG REPORT:** ICRC should implement a written policy or include language in its sponsorship contracts on how it will distribute tickets or other benefits it receives through sponsorship agreements paid for with government funds. ICRC should ensure that it has a clearly documented method for distributing such benefits in a way that furthers its mission to educate the public. If ICRC is providing tickets to staff or family members of staff, ICRC should be able to explain why this is in the public interest.

ICRC CAP: See Recommendation 6

5. **OIG REPORT:** ICRC should maintain detailed records of tickets and other benefits received through sponsorship agreements going forward. The records should document who determined who would receive tickets, what criteria was used to determine who received tickets, who received the tickets and how the tickets were distributed.

ICRC CAP: See Recommendation 6

6. **OIG REPORT:** ICRC should avoid giving tickets or other items of value to employees as a reward for performing their job functions to avoid violating the Code's additional compensation rule, which is found in 42 IAC 1-5-7.

ICRC CAP: Regarding future sponsorship or other procurement agreements that involve the receipt of tickets or other benefits, ICRC will use one of the following options, depending on the recipient and nature of the benefit:

Option 1 - If ICRC sponsors a mass event that does not include the receipt of assignable benefits, then in collaboration with the event host, ICRC will arrange for the use of a promotional code or voucher that will be made available to any member

of the public through the event host. The promotional code or voucher would allow for some form of participation discount that is available to the public at large and promotes ICRC.

Option 2 - If ICRC sponsors an event that provides a benefit to an outside organization, ICRC's Deputy Director of External Affairs will document distribution of the benefits in a memo, which will include, at a minimum: 1.) the description of the distributed benefit and basis/criteria for the assignment; 2.) the name of the outside organization and of the individuals who will attend the event; 3.) how the attending individuals are associated with the outside organization, and 4.) a confirmation that the benefit will only be used for the intended purpose.

Option 3 - If ICRC sponsors an event that provides a benefit that will be assigned to agency staff members, ICRC's Deputy Director of External Affairs will document determinations of who will receive the benefits in a memo, which will include, at a minimum: 1.) description of the distributed benefit and basis/criteria for the assignment, 2.) agency staff assigned to the event and verification that attendance was intended to advance the agency's mission, and 3.) a summary of the staff's activities at the event.

7. **OIG REPORT:** ICRC, and all other executive branch agencies, should fully cooperate with OIG investigations and provide timely responses to OIG requests for information.

ICRC CAP: ICRC concurs that ICRC should fully cooperate with OIG investigations and provide timely responses to OIG requests for information.

The OIG accepted ICRC's CAP as drafted with no further comment.

II. OIG Follow-up Investigation

On November 2, 2022, Inspector General Cook opened a follow-up investigation (OIG Follow-up Investigation) to determine whether ICRC has complied with the CAP that ICRC submitted to the OIG in October of 2021. As part of the OIG Follow-up Investigation, on December 15, 2022, Special Agent Coffin sent ICRC a Request for Information (Request for Information), which included several questions related to the status of ICRC's CAP. Special Agent Coffin submitted the Request for Information to ICRC both via email and certified mail. He asked that ICRC reply to the Request for Information within thirty days. ICRC requested an extension of time to reply to the Request for Information due to the holiday season, and Inspector General Cook granted an extension through February 15, 2023. ICRC asked for a second extension, and Inspector General Cook granted an extension through February 28, 2023.

The OIG received ICRC's response (ICRC's February 2023 Response) to the Request for Information on February 28, 2023. ICRC's February 2023 Response contained some of the information that the OIG had requested, as well as some of the steps ICRC has taken to comply with its CAP. For example, ICRC's February 2023 Response notes that ICRC's current Ethics Officer (Current EO) provided ethics training to all ICRC employees and to all cultural commissions for which ICRC provides staffing support on at least two separate occasions since the OIG issued its Report. ICRC's February 2023 Response also notes that ICRC's Current EO has met with ICRC staff and board commissioners many times to determine if a conflict of interests exists and how to remedy it. It includes information on several instances where the Current EO advised an ICRC employee or special state appointee on the Code's conflicts of interests rules. In one instance cited, ICRC notes that ICRC denied an expenditure in November of 2022 due to a board member failing to disclose a conflict of interests related to decisions and voting. According

to ICRC's February 2023 Response, the Current EO was working with the board member to complete the required disclosure statement.

Although ICRC's February 2023 Response provided some of the information that the OIG requested, it did not provide all the information requested. Moreover, it did not provide sufficient details for the OIG to determine whether ICRC complied with some of the provisions of its CAP. For example, in the OIG Request for Information, the OIG asked ICRC who provided ICRC executive staff with the material related to state and federal procurement requirements to which ICRC referred in its CAP. ICRC responded that all ICRC executive staff were provided and reviewed the material in September of 2021, but ICRC did not provide any details on who facilitated the review or how ICRC documented compliance with these provisions of the CAP. The OIG also asked ICRC whether it had entered into any sponsorship agreements involving the receipt of tickets or other benefits. If it had, the OIG asked ICRC which of the three options ICRC utilized from ICRC's CAP. The OIG asked for documentation to show compliance with the chosen option for each sponsorship. ICRC's February 2023 Response stated that ICRC was following an internal process, but it did not provide details of which sponsorships ICRC had entered into or which option ICRC utilized for each sponsorship. It also provided no documentation in response to this request.

On March 7, 2023, the OIG sent ICRC several follow-up questions (OIG's March 2023 Follow-up Questions). Most of these questions were the same or very similar to questions from the Request for Information to which ICRC failed to respond in ICRC's February 2023 Response. For example, the OIG again asked ICRC for information on how ICRC distributed information on state and federal procurement requirements to its executive staff. The OIG also asked for details on any sponsorship agreements that ICRC entered into since the OIG Investigation and which option from the CAP that ICRC used for distributing tickets to events. Also, the OIG asked for the

status of the disclosure statement referred to in ICRC's February 2023 Response that ICRC's Current EO was working on for a board member due to a conflict of interests that ICRC discovered in November of 2022. The OIG asked that ICRC reply to OIG's March 2023 Follow-up Questions by April 7, 2023.

On April 6, 2023, ICRC submitted a response (ICRC's April 2023 Response) to the OIG's March 2023 Follow-up Questions. Regarding questions the OIG asked about providing state and federal procurement materials to ICRC's executive staff, ICRC stated that ICRC's former Ethics Officer (Former EO), who left the agency in September of 2021, was in a better position to answer the questions. ICRC's April 2023 Response stated that ICRC's Current EO believed the Former EO provided the referenced materials to ICRC executive staff prior to his departure. In December of 2022, Special Agent Coffin sent ICRC's Former EO the same questions he sent ICRC in the Request for Information. ICRC's Former EO stated that he knows the CAP and related materials were shared with ICRC's Executive Director and ICRC's Current EO, but he had no knowledge regarding the distribution of the CAP or related materials after his employment with ICRC ended on September 17, 2021. He also noted that he left ICRC employment two days after ICRC submitted its CAP to the OIG. ICRC's Former EO responded that he had no additional knowledge about the questions OIG raised.

In response to the OIG's questions regarding the current EO's work with the board member whom ICRC identified had a conflict of interests, ICRC's April 2023 Response indicates that ICRC's Current EO is still working on the conflict of interests disclosure statement with the individual involved. According to the information ICRC provided, ICRC identified the conflict of interests in November of 2022. ICRC's April 2023 Response did not explain why the conflict of interests disclosure statement had not yet been filed, over five months after ICRC identified the

conflict of interests in November of 2022. Furthermore, ICRC did not provide a date by when the board member will file the statement.

Finally, regarding benefits received from ICRC sponsorship agreements, ICRC's April 2023 Response provides that ICRC entered into four sponsorship agreements since the OIG issued its Report. ICRC's April 2023 Response provided the Options from the CAP that ICRC used to distribute benefits resulting from each of these sponsorships. ICRC also provided documentation on how ICRC distributed the benefits for each of these sponsorships.

Although the documentation provides some of the information ICRC said it would maintain as part of its CAP, some of the information appeared incomplete or inconsistent. For example, the CAP provided that under options 2 and 3, ICRC's Deputy Director of External Affairs would document determinations on who would receive the benefits from the sponsorships in a memo that contained specific details of the determinations. ICRC attached several memos from ICRC's Director of Special Projects for tickets that ICRC distributed for sponsored events. The memos appeared to be a form memo that included the name of the ICRC staff member who received the tickets, along with the number of the tickets he or she received; however, the memos contained limited information on why the employee was chosen to attend the event or why ICRC provided him/her with a certain number of tickets. All of the memos documenting distribution of tickets to ICRC staff members contained standardized form language simply stating, "the staff member attending the event are [sic] qualified to discuss the overall mission of the agency" with no further details.

Furthermore, some of the memos contained inconsistent information. For example, in one memo, the opening paragraph referenced a sponsorship agreement with the Indianapolis Indians, but the information about ticket distributions referenced the Circle City Classic. Also, some of the

dates and signatures on the memos were questionable. Some of the memos did not contain dates at all. Other memos included signatures and dates attesting that the ICRC staff member used his or her assigned tickets to attend the referenced event; however, the date included on the memo predated the date of the event. Finally, some of the signatures included on the memos seemed inconsistent with the same ICRC staff member's signatures on other memos.

III. Conclusion and Recommendations

The goal of the OIG's Follow-up Investigation was to determine the status of and ICRC's compliance with the CAP that ICRC submitted in response to the OIG's Report. ICRC had over a year to implement its CAP. During that time, ICRC made efforts to comply with some of the provisions of the CAP. For example, the ICRC's Current EO provided ethics training to all ICRC employees and cultural commissions on at least two separate occasions since the OIG issued its Report. Although ICRC made some efforts to comply with the CAP, the OIG found several deficiencies in ICRC's implementation of its CAP.

First, ICRC's April 2023 Response reads that ICRC's Former EO is in a better position to answer questions regarding how ICRC complied with the provisions in its CAP related to providing material to ICRC's executive staff on state and federal procurement requirements; however, ICRC's Former EO wrote that he had no knowledge of distribution of the CAP or related materials after he left ICRC employment. Based on ICRC's April 2023 Response and ICRC's Former EO's responses, it is unclear whether ICRC ever distributed the materials on federal and state procurement requirements referenced in ICRC's CAP. It is also unclear whether ICRC has a plan in place to ensure ICRC staff are trained on these requirements going forward.

Second, ICRC's February 2023 Response notes that in November of 2022, ICRC denied an expenditure for a member of one of its boards, due to a conflict of interests. According to

ICRC's April 2023 Response, ICRC's Current EO was still working with the board member on the conflict of interests disclosure statement in April of 2023. The OIG does not have details regarding the conflict of interests that ICRC identified; therefore, the OIG does not know whether the conflict of interests falls under any of the Code's conflict of interests rules, including Ind. Code §4-2-6-9. If the conflict of interests falls under Ind. Code §4-2-6-9, the written disclosure statement must be filed within seven days after the conduct that gives rise to the conflict of interests. It is unclear why it has taken the board member over five months to file the disclosure statement. The OIG notes that as of the publishing of this Report the disclosure statement remains unfiled.

Third, ICRC's April 2023 Response to the OIG included memos documenting how ICRC distributed tickets received from four sponsorship agreements that ICRC entered into since the OIG issued its Report. Although the memos contained some information about distribution of these benefits, the memos contained limited detailed and, in many instances, inconsistent information.

Due to the serious nature of the concerns identified in the OIG's Investigation and the OIG's Follow-up Investigation, the OIG again makes recommendations to ICRC to help ICRC prevent the types of issues the OIG discovered in its investigations in the future. Furthermore, the Inspector General finds that it is in the public's interest to publish this Report because it may be instructive to other state executive branch agencies on how they can encourage compliance with state and federal contracting requirements and the Code's conflict of interests provisions. It also may encourage state executive branch agencies to better document use of state funds, especially as related to sponsorship agreements and any benefits received.

Recommendation 1

ICRC's Executive Director should implement the first two provisions of ICRC's CAP. First, the Executive Director should ensure that all executive staff receive copies of and review the

following material related to the state contracting process: presentation materials from the most recent State Contract Seminar, the most recent version of IDOA's Professional Services Contract Manual, the SCM Financials Procedure Overview, How to Create Requisitions and Request for Special Procurements. Second, ICRC's Executive Director should ensure that all ICRC executive staff receive copies of and review the following material related to federal procurement requirements: the most recent HUD Funding Guidance for Fair Housing Assistance Programs, HUD Legal Memo Concerning the Transition to 2 CFR Part 200 and a copy of 2 CFR Part 200. Third, ICRC's Executive Director should ensure that all ICRC executive staff complete relevant HUD training. These efforts will help ICRC educate its staff on how to comply with state and federal contracting, procurement and grant requirements. Furthermore, the OIG recommends that ICRC have a process in place to distribute updated material on an annual basis and to document that this information has been appropriately distributed.

Recommendation 2

The board member for whom ICRC identified a conflict of interests in November of 2022 should file a conflict of interests disclosure statement immediately. If the conflict of interests falls under Ind. Code §4-2-6-9, the board member is already in violation of the requirement to file the statement within seven days after the conduct that gives rise to the conflict of interests; therefore, he or she must file the statement immediately. Even if the conflict of interests does not fall under Ind. Code §4-2-6-9, ICRC has determined that the board member should file a disclosure statement. It should not take a state employee or special state appointee five months to file a disclosure statement. The purposes of these statements include increasing transparency and allowing for the agency to appropriately screen the employee or special state appointee from the

conflict of interests. These statements do not fulfill either of these purposes if they are filed months after the conflict of interests is identified.

Recommendation 3

ICRC's Ethics Officer should advise all ICRC employees and special state appointees that they must seek advice from the OIG or file a conflict of interests disclosure statement with the OIG *as soon as they discover* that they have a potential conflict of interests under the Code. Under ICRC's CAP, when a member of the ICRC staff or a Commission member identifies a possible conflict of interests, ICRC will seek a formal or informal advisory opinion from the OIG. Also, under ICRC's CAP, if a member of the ICRC staff or a Commission member identifies a conflict of interests, ICRC's Ethics Officer will prepare and file the appropriate disclosure statement and supporting materials with the OIG under the CAP. These two steps must be taken *as soon as possible* after the conflict of interests is identified so that the agency can protect against the conflict of interests. Furthermore, agency ethics officers should be aware of and advise agency employees and special state appointees regarding the deadlines for filing disclosure statements contained in the Code.

Recommendation 4

ICRC should more thoroughly and carefully document how it distributes benefits, such as tickets to popular sporting events, that ICRC receives from sponsorship agreements for which the taxpayer is paying. ICRC provided three reasonable options for distributing such benefits in its CAP, along with very specific ways to document decisions on how ICRC would distribute such benefits. The OIG approved these options to help ensure that the distribution of such benefits, including tickets to ICRC staff and their family members, furthered ICRC's mission to educate the public. Due to the lack of detail and inconsistent information included in some of the memos the

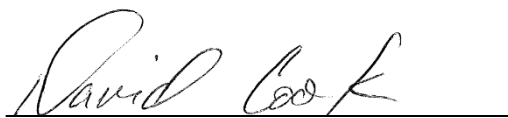
OIG received as part of ICRC's April 2023 Response, the OIG cannot determine whether ICRC distributed tickets in a way that supported ICRC's important mission, rather than to provide perks to ICRC leadership and staff members. In the future, ICRC should ensure that the distribution of tickets received from ICRC sponsorship agreements follows the options outlined in the CAP. Furthermore, ICRC should ensure that it documents the distribution of tickets with detailed and accurate information in accordance with the CAP.

Recommendation 5

The OIG reiterates its seventh recommendation from the OIG's Investigation Report. ICRC, and all other executive branch agencies, should fully cooperate with OIG investigations and provide timely responses to OIG requests for information. Under Ind. Code §4-2-7-4, the OIG has the authority to examine witnesses under oath and examine documents that an agency maintains. Failure to provide timely responses to OIG requests extends the length of OIG investigations and wastes resources of both the OIG and the agency involved. It also may cause information to become stale or more difficult to locate witnesses, which adversely impacts the OIG's ability to address wrongdoing in agencies. This recommendation applies to both initial investigations and follow-up investigations.

Dated: April 25, 2023

APPROVED BY:

A handwritten signature in cursive script, appearing to read "David Cook", is written over a horizontal line.

David Cook, Inspector General