

Digest of A Performance Audit Of the Insurance Fraud Division

The Insurance Fraud Division (IFD), within the Department of Insurance (DOI), has exposed the state to some liability risks as a result of its lack of basic management controls and the resulting expansion of its operations beyond its original mission. A primary concern of the state insurance commissioner is the question of changing IFD investigators from special function officers to law enforcement officers. This change does not appear necessary.

During the fall of 2008, the insurance commissioner hired a new IFD director. The new director has already made some changes to the IFD's management controls and has indicated his plans to fully implement the recommendations made in this report.

IFD Mission Expansion Has Not Been Controlled. The IFD's mission to protect the public is accomplished by investigating and prosecuting insurance fraud violators and by seeking restitution for defrauded insurers. In 2000, the IFD was clearly operating within its mission. However, by 2007 it appears close to 20 percent of the cases prosecuted and sentenced did not involve insurance. Such cases generally involved drug seekers (i.e., people seeking drugs because of drug addiction or drug street value).

Unfortunately, many of these drug seeker cases have no insurance involvement. Consequently, insurance companies that fund IFD operations pay the investigative costs for these drug seeker cases that have no possible insurance restitution. The IFD benefits from investigating these cases because any additional investigative cost reimbursement can be used to supplement IFD operations.

Policies and Procedures Have Not Been Well Developed. The IFD's policies and procedures are weakly developed and poorly enforced. In some cases, operational policies and procedures are present but are not followed. In other cases, policies and procedures

Chapter I: Introduction

Chapter II: Management Needs to Address Deficiencies in IFD Operations

are clearly needed but do not exist. IFD management has been working to correct policy and procedure deficiencies.

Other IFD Management Controls Have Also Been Weak.

Control weaknesses include poorly documented supervision of investigators' activities and case management as well as insufficient training in appropriate internal IFD office procedures.

IFD's Case Management System Is Insufficient. IFD's existing computerized case management system is insufficient for the division's needs and potentially hampers its effectiveness. IFD management has recognized the current system's inadequacy and is looking for a replacement system.

Recommendations

1. We recommend IFD management review work with task forces and limit work to those task forces whose cases have an insurance connection.
2. We recommend IFD management develop a screening system that ensures all cases investigated and prosecuted have an insurance connection.
3. We recommend IFD management develop appropriate policies and procedures, ensure each staff member has an up-to-date copy of the adopted policies and procedures, and ensure each staff member follows the adopted policies and procedures.
4. We recommend IFD management develop a systematic approach to case supervision and documentation.
5. We recommend IFD management develop a systematic approach to IFD-specific procedural training based on the adopted policies and procedures.
6. We recommend IFD management ensure that appropriate purchasing procedures are always followed.
7. We recommend IFD management replace the existing case management system with one that:
 - Produces information in a variety of formats
 - Provides internal system security
 - Contains logical error checks
 - Contains an alert system for inactive cases
 - Tracks time to complete an investigation
 - Tracks whether a case was accepted for prosecution
 - Tracks court-ordered restitution and investigative costs

Use of Special Function Officer (SFO) Status Was a Conscious Decision. Utah’s use of SFOs within the IFD was planned by the Legislature since the IFD’s inception; it was not a rash decision. IFD investigators are classified as SFOs in accordance with *Utah Code* 31A-2-104, which also states IFD investigators are not eligible for public safety retirement.

Full Law Enforcement Officer (LEO) Status Does Not Translate to Higher Performance. States requiring LEO status for their insurance fraud investigators do not necessarily produce more fraud convictions than Utah’s SFO investigators. Of the 20 states reviewed, Utah is above average in both numbers of convictions per investigator and number of convictions per 100,000 residents. Further, within the Utah IFD itself, the investigators performed similarly, in terms of number of convictions, regardless of previous law enforcement experience.

Changing IFD Investigators to LEOs Would Increase Costs. If IFD investigators were required to be LEOs, they would qualify for public safety retirement. Public safety 20-year retirement, with its higher contribution rate, is a more costly benefit than IFD’s current plan, traditional 30-year retirement. While creating an increase in benefit costs, changing to LEOs would be unlikely to affect salaries.

1. We recommend IFD investigators remain SFOs.

**Chapter III:
Changing IFD
Investigator Status
to Law Enforcement
Officer Not
Necessary**

Recommendations

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REPORT TO THE
UTAH LEGISLATURE

Number 2009-09

**A Performance Audit
Of the
Insurance Fraud Division**

June 2009

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Chapter I

Introduction

The Insurance Fraud Division (IFD) within the Department of Insurance (DOI) needs to improve deficiencies in its operations. Of particular concern is the ineffectiveness or lack of basic management controls—for example, policies and procedures—that have the potential to expose the state to unnecessary risk. While we were reviewing the allegations, the insurance commissioner asked us to provide our opinion on whether IFD investigators should be changed from special function officers to law enforcement officers. A copy of the request letter is in the Appendix. In our opinion, this change is not necessary.

Restitution Is a Primary Goal of the Insurance Fraud Act

The IFD was created in fiscal year 1995 to enforce the Insurance Fraud Act passed in the 1994 General Session of the Utah State Legislature. This act defined the elements of insurance fraud and imposed assessments against insurers operating in the state to fund the implementation of the act. As a result, IFD operations are funded by insurance companies.

In 2004, the Legislature modified the Insurance Fraud Act to include specified civil penalties for insurance fraud. As a result, in addition to any criminal penalties assessed by the court, a guilty party can be compelled to make full restitution to the injured party and pay the costs of enforcing the Insurance Fraud Act. Figure 1.1 identifies, for fiscal years 2007 and 2008, IFD revenue, IFD operational expenses, and IFD contribution to carry forward.

The IFD was created in fiscal year 1995 to enforce the Insurance Fraud Act.

Figure 1.1 IFD Revenues and Expenses for Fiscal Years 2007 and 2008. The IFD made a positive contribution to its carryforward in 2008.

	Fiscal Year 2007	Fiscal Year 2008
Insurance Assessments	\$1,356,500	\$1,499,950
Investigative (Enforcement) Costs Collected	239,520	370,500
Total IFD Revenue	\$1,596,020	\$1,870,450
IFD Expenses	\$1,606,315	\$1,700,640
Contribution to Carryforward	(\$ 10,295)	\$ 169,810

The IFD’s investigative and prosecutorial work can result in restitution to defrauded insurers. State court awarded restitution is documented by the state’s accounting system. However, IFD management reports that additional restitution is also awarded in federal courts or passed through the U.S. Attorney’s Office. These federal awards generally do not come through the state and are not documented by the state’s accounting system. Both collection amounts are shown in Figure 1.2.

Figure 1.2 Total Restitution Amounts Collected Through the State and Total Restitution Reported by the IFD. The total amounts reported by the IFD include restitution awarded in federal courts.

	FY 2007 State Collected Restitution	FY 2007 IFD Reported Restitution	FY 2008 State Collected Restitution	FY 2008 IFD Reported Restitution
Restitution Collected	\$ 608,470	\$1,128,150	\$ 960,710	\$4,170,550

As can be seen, the restitution collection amounts reported by the IFD for fiscal years 2007 and 2008 are substantially higher than those documented by the state’s accounting system alone. Information was not available that would allow us to document the cases or restitution amounts contributing to the additional amounts reported by the IFD. IFD management later reported that approximately \$3 million of the reported \$4.1 million in fiscal year 2008 restitution came from one case settled in U.S. District court.

Restitution collection amounts reported by the IFD contain restitution awarded in federal courts.

IFD Case Activity Has Increased

The number of IFD cases received and opened has increased as well, as shown in Figure 1.3. We documented the information on cases opened for investigation using an IFD database. The number of cases referred for possible investigation was reported by IFD management; information was not available for us to document their numbers. We were told that potential cases are primarily referred from the National Insurance Crime Bureau, insurance companies, other law enforcement agencies, and citizen complaints.

Figure 1.3 A Comparison of IFD Case Activity Through and After 2002. The time period after 2002 shows a significant increase in case activity.

	Average Number of Cases Referred per Year	Average Number of Cases Opened per Year
Fiscal Years 1995-2002	229	139
Fiscal Years 2003-2008	607	392

We grouped the data as we did because the overall activity levels between fiscal years 2002 and 2003 differed dramatically; in other words, the change in overall activity was not gradual, but abrupt. The IFD opened over 2.5 times the number of cases per year during fiscal years 2003-2008 as in fiscal years 1995-2002. A similar statement can also be made for the number of cases referred per year.

With IFD investigative staff (including the director and two deputy directors) numbering 10 or 11, these caseload increases may have overtaxed the IFD’s managerial systems. In May 2008, supervision changed from each investigator working independently and reporting to the director to each investigator working under the supervision of a deputy director, each deputy with his own caseload.

Also, during the 2008 General Session, the Utah State Legislature passed House Bill 93, which required insurance companies to report all suspected fraudulent insurance acts to the DOI. IFD management reports an increase in the number of referrals as a result of House Bill 93. The fiscal note to House Bill 93 stated that enactment of this bill would require an additional \$1.2 million in ongoing dedicated credits

House Bill 93, passed in 2008, implemented mandatory reporting of all suspected fraudulent insurance acts.

to fund nine additional fraud investigators; however, the statute governing insurance assessments was not changed. As a result, dedicated credits did not increase and the additional fraud investigators were not hired.

If an agency is not well grounded procedurally, management can lose control in a time of accelerating growth. The IFD was not procedurally well grounded. To date, however, no significant consequences have resulted from these procedural weaknesses.

Audit Scope and Objectives

This audit is primarily a review of allegations. In the spring of 2008, two events occurred that were the catalysts for the allegations made to our office.

**This audit is primarily
a review of allegations.**

- One event was the resignation/termination of an investigator who was still in the probationary period of his employment. During probation, an employee can be terminated with no right to the grievance procedure; probationary employees are essentially at-will employees. Management indicated that they had become dissatisfied with this employee's work; they allowed the employee to resign rather than be terminated. In our opinion, IFD management, working with state human resources, properly exercised its right during the probationary period and we did not pursue the matter further.
- The other event was the person hired for a second deputy director position. This person had previously worked as an IFD investigator for over four years and was considered a top performer. This person also had some management and private insurance experience. Since this person was qualified for the job, we did not pursue the matter further.

We believe these events triggered a series of allegations that were quite varied in nature. Some of the allegations focused on the actions of specific individuals, most frequently the former division director and his management team. The environment within the IFD was notable for the level of interpersonal hostility. Other allegations focused on the operations of the IFD as a whole. It was on these

latter allegations that we focused since they had a potentially broad impact. We did not pursue the personal allegations unless we found clear impact on the division as a whole and documentation to support the allegation. During the fall of 2008, the former director retired; a new director was hired a few months later. Upon the former director's retirement, we did not request any further information from him.

While we were reviewing the allegations, the insurance commissioner requested a review of investigator status. The investigators are special function officers. The commissioner asked if they should become law enforcement officers.

Consequently, this audit had two objectives:

- Determine the merit of allegations that potentially impact the division and its work.
- Determine if IFD investigators should become law enforcement officers.

We primarily focused on allegations that had the potential for broad agency impact.

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Chapter II

Management Needs to Address Deficiencies in IFD Operations

Operations of the Insurance Fraud Division (IFD) within the Department of Insurance (DOI) have not been well controlled by management; improvements need to take place. Some mission drift has occurred. In fiscal year 2000, all IFD cases prosecuted involved insurance fraud. The same cannot be said for cases prosecuted in fiscal year 2007. This mission drift may be due to inadequate policies and procedures along with insufficient basic management controls (e.g., supervision and training). Since IFD's staff has law enforcement power while working, inadequacies in these areas can create a risk liability for the state. In another area, IFD management and staff are hampered by the insufficiency of the IFD's case management system. The information is not secure and the system is cumbersome. IFD management has been aware of this problem and is now moving toward purchasing a replacement system.

IFD Mission Expansion Has Not Been Controlled

The IFD's overall mission is to enforce the Insurance Fraud Act. This mission to protect the public is accomplished by investigating and prosecuting insurance fraud violators and by seeking restitution for defrauded insurers. In 2000, the IFD was clearly operating within its mission; by 2007, this was not the case. In 2007, perhaps as many as 20 percent of the cases prosecuted and sentenced did not involve insurance. Such cases generally involved drug seekers (i.e., people seeking drugs because of drug addiction or drug street value).

Some drug seeker cases are associated with the IFD's optional work with task forces that do not have insurance fraud as an emphasized part of their mission (e.g., Violent Crimes Task Force, Narcotics Task Force). Investigating drug seeker cases, even when insurance is not involved, benefits the IFD because their investigative costs are frequently reimbursed by the guilty drug seeker. On the other hand, a defrauded insurer does not benefit when IFD

In 2000, the IFD was clearly operating within its mission; by 2007, this was not the case.

investigative and prosecutorial time is spent on cases having no insurance involvement; the possibility, in these cases, of the defrauded insurer being made whole through restitution is nonexistent.

The IFD Was Created to Enforce the Insurance Fraud Act

The IFD enforces the Insurance Fraud Act; its stated mission to protect the public is comprised of the following three areas:

- Investigate and prosecute insurance fraud violators
- Provide a focal point for insurance antifraud efforts
- Educate the public regarding insurance fraud

While this is the IFD's general stated mission, legislators have made statements that are useful in defining a more consumer-specific mission. In the 2008 General Session, the Utah State Legislature passed House Bill 93, which requires insurance companies to report all suspected fraudulent insurance acts to the Department of Insurance. The IFD then investigates these reports and prosecutes likely insurance fraud. During the floor debates, House and Senate sponsors made these points:

- All insurance premiums are estimated to be \$1,000 higher than necessary because of insurance fraud.
- House Bill 93 is a consumer bill; this bill's purpose is to reduce insurance premiums or slow their rise.

The first point implies that insurance company fraud losses are simply passed on to the consumer. The second point indicates that legislators want to lessen the burden of insurance company fraud losses on the consumer. If fraud losses were repaid by the guilty party, then these losses would not be passed to the consumer. Therefore, a consumer-specific mission statement would say that the IFD's mission is to reduce the consumer's burden of insurance company fraud losses by:

- obtaining restitution from guilty defendants; and,
- reimbursing the insurance companies for their fraud losses.

If IFD cases do not involve insurance, then neither the IFD's general mission (investigate and prosecute insurance fraud) nor the specific

If IFD cases do not involve insurance, then the IFD's mission cannot be met.

consumer-oriented mission (provide restitution to the defrauded insurer) can be met.

The IFD's Work Was Within Mission in 2000, But Drifting by 2007

In 2000, all of the cases prosecuted by the IFD were within the scope of its mission. In 2007, this was not the case; as many as 20 percent of the cases prosecuted and sentenced did not involve insurance.

In making our mission assessment, we considered only those cases prosecuted by the IFD's attorneys and sentenced. We did not consider federally prosecuted cases. All cases prosecuted and sentenced with restitution as an outcome were counted as meeting the IFD's mission. Cases prosecuted and sentenced with only investigative cost reimbursement (reimbursement to the IFD for investigative and prosecutorial costs) as an outcome were sampled and reviewed further. If insurance fraud charges were made, the case was counted as meeting the IFD's mission. If not, the case was counted as being outside the IFD mission.

Fourteen cases were prosecuted by the Attorney General's Office and sentenced in 2000. Thirteen of these cases (93 percent) contained restitution as an outcome. The remaining case contained only investigative cost reimbursement (totaling \$300) as an outcome. Nonetheless, the IFD did charge attempted false/fraudulent insurance in this case. Consequently, 100 percent of the cases prosecuted and sentenced were within the IFD's mission.

In 2007, 91 cases were prosecuted by the Attorney General's Office and sentenced. Of these cases, 57 (63 percent) included restitution as an outcome. The remaining 34 cases (37 percent) included only investigative cost reimbursement as an outcome. We reviewed 16 of the 34 cases and found that only 7 (44 percent) contained a charge of insurance fraud. Consequently, it appears close to 80 percent of the cases prosecuted and sentenced were within the IFD's mission while 20 percent were not. The majority of the cases outside the IFD's mission involved drug seekers. Drug seeker cases made up approximately 39 percent of the IFD's cases in fiscal year 2007.

In 2007, as many as 20 percent of the cases prosecuted and sentenced were outside the IFD's mission.

Drug seeker cases made up 39 percent of the IFD's cases in fiscal year 2007.

Although abuse of controlled substances is a serious problem nationwide, the investigation and prosecution of such cases is not the mission of the IFD.

Drug Seeker Cases Often Do Not Involve Insurance

Of the 16 cases just discussed, eight were medical/health cases. All eight were drug seeker cases and only one contained a charge of insurance fraud. The seven remaining cases contained such drug seeker charges as:

- Acquiring a controlled substance by prescription alteration
- Falsely obtaining/dispensing prescriptions
- Possession or use of a controlled substance
- Distribution of a controlled substance
- Attempted distribution of a controlled substance

Although abuse of controlled substances is a serious problem nationwide, the investigation and prosecution of such cases is not the mission of the IFD.

The other eight of the 16 cases discussed previously were primarily classified as auto injury/property fraud or agent fraud schemes. By comparison, six of these eight cases (75 percent) contained insurance fraud charges, while only one of the eight medical health cases (13 percent) did.

Drug Seeker Cases Are Often Associated with Optional Task Force Work

Drug seeker cases are often linked to the division's optional work with task forces (e.g., Intermountain West Pharmaceutical Narcotic Task Force). In an assessment separate from the above samples, we selected and reviewed 20 case files opened between 2003 and 2007. Three of the cases (15 percent) were connected to task force work, and all three were drug seeker cases. Looking at the numbers from a different perspective, we found that six of the 20 cases were drug seeker cases and three of these cases (50 percent) were connected to task force work.

This work with task forces is not statutorily required. Some task force operations have been a primary source of cases lacking an insurance connection; IFD's management began to scale back its task force work in July 2008.

Drug Seeker Cases Often Reimburse the IFD But Not Insurance Companies

Drug seeker cases often provide investigative cost reimbursement for the IFD but no restitution for insurance companies that fund the IFD. Consequently, it is possible that the IFD is rewarded for pursuing cases without clear insurance involvement.

Utah Code 31A-31-109 allows the IFD to recover their costs of enforcing the Insurance Fraud Act (called investigative costs) from guilty defendants. These investigative costs augment the insurance company assessments imposed by the Insurance Fraud Act.

In the eight 2007 drug seeker cases discussed previously, none contained a restitution order for a defrauded insurer. However, all eight cases contained orders for IFD investigative cost recovery. The fact that the IFD was awarded between \$1,000 and \$4,000 per case in investigative costs indicates that a fair amount of time was put into each case even though insurance was not involved in seven of the eight cases.

Drug seeker cases can pull division investigators away from the division's core mission—identifying insurance fraud and requiring guilty defendants to reimburse insurance companies through restitution. The current director has expressed an interest in first reviewing task force work and the relationship task forces have with insurance fraud before addressing the division's current case selection process. This is a reasonable first step. In addition, while this section focused on drug seeker and task force cases, we believe the IFD should ensure that all cases investigated, regardless of type or source, have a clear insurance fraud connection.

The IFD's activities appear to have expanded beyond their enabling statute and their mission. In our opinion, poor policies and procedures may have played a role in this expansion.

Because drug seeker cases often do not involve insurance, restitution is not awarded, but IFD investigative costs are.

The IFD should ensure that all cases investigated have an insurance fraud connection.

Policies and Procedures Have Not Been Well Developed

The IFD's policies and procedures are weakly developed and poorly enforced. In some cases, operational policies and procedures are present but are not followed. In other cases, policies and procedures are clearly needed but do not exist.

Policies and procedures are particularly important for an agency with law enforcement powers.

We believe that establishing and following policies and procedures is particularly important for an agency with law enforcement powers. Building a defensible case is reliant on division and investigator work standing up to close scrutiny. Failure to provide the best possible work can be costly to the state.

The former IFD director acknowledged that policies and procedures should have been better developed, but since the IFD never had significant problems before, he did not see a pressing need for policies and procedures. The ongoing lack of policies and procedures resulted in one investigator compiling some policies and procedures on his own for the former director to review, but nothing came from the investigator's efforts.

The former IFD director provided us with a binder containing all existing policies and procedures. However, IFD investigators claimed they did not have such a binder. In fact, IFD investigators reported that they had not really had much of a policy and procedure manual until recently, when a deputy director compiled some policies and procedures and provided them to the investigators for their comments. The new director has been reviewing new policies and procedures which were finalized in April 2009.

IFD investigators reported they had not had much of a policy and procedure manual until recently.

The following sections highlight some areas of concern with IFD policies and procedures.

Evidence Collection Policy Existed But Was Not Followed

In May 2000, an evidence policy was distributed by a former IFD director in the form of a memo. This policy details how evidence is to be recorded, stored, and released by the IFD. In short, investigators were to log evidence collected onto an evidence custody document.

When evidence was checked out of the evidence room for any purpose prior to its final disposition, the evidence transfer was to be recorded on the evidence custody document. An evidence custodian was to maintain the active evidence custody record, which contained copies of each evidence custody document. It was this record that was to serve as a control device for periodic reviews of evidence holdings, and this document was to represent all evidence for which the evidence custodian was responsible. A final evidence disposition file was also to be maintained by the evidence custodian that would indicate when evidence was disposed of and by whom.

In practice, we found no evidence that this policy was ever implemented. There was no evidence custodian, no active evidence custody record, and no final evidence disposition file. When we requested IFD evidence logs, two sheets of paper entitled either “evidence room transaction report” or “evidence room access record,” and two sheets of paper having no title were provided. These records indicate the date, the case number, the activity, and the investigator. However, these records do not identify specifically what is being held as evidence.

Evidence logs detailing specifically seized items were found in individual case files. Using two such evidence logs, we tested to see if corresponding entries were entered into the evidence room transaction report. In both cases, no entries were made.

Case 1

Items recorded as seized:

- Pills— 50 Oxycotin 80, 27 Lortab 10, 1 Altram, 4 yellow Lortab10
- Beretta 96
- Glock 26
- Ruger M77 270 Winchester with scope
- Benelli SPA shotgun
- Cell phone— Verizon LG
- Receipt for \$42,000 Ford truck

As can be seen, four guns and several prescription pills were seized, all items that should be treated with considerable care. These items were, according to IFD staff, stored in the evidence room. However, these items were never logged on the evidence room transaction

Evidence collected was not always logged into the evidence room.

Four guns and several prescription pills seized as evidence were never logged into the evidence room.

**Disposition of one gun
and the seized drugs is
uncertain.**

report. The weapons and drugs were not returned to the original owner because of his felony drug conviction; the IFD therefore, could take possession of the weapons. We were able to document with some certainty what happened to three of the weapons.

- The Glock 26 was taken from the evidence room by an IFD investigator and tested for possible use as a duty weapon. The weapon was later reported as stolen from the investigator's personal vehicle.
- The Ruger M77 270 Winchester was traded by the IFD to a police supply store for an account credit of \$40.
- The Beretta 96 was traded by the IFD to a police supply store for credit.

As for the fourth weapon, there is no record of a Benelli SPA shotgun leaving the evidence room. But the IFD did sell a Benelli Supernova shotgun, listed as coming from a different IFD case, to a police store for credit. The shotgun was then sold by the store, for the same price, to an IFD investigator. IFD staff believed that the original document, filled out when the weapon was seized by a member of a different department, was incorrect. However, division personnel did not know why the shotgun was identified with the wrong IFD case. According to IFD staff, the pills were destroyed along with drugs seized in other cases; records documenting disposal could not be produced. The disposition of the cell phone and receipt is unknown.

Case 2

Items recorded as seized January 2008:

- Day planner
- Customer file
- Customer file
- Forged document
- Customer policy
- Customer policy
- Misc. written notes
- Forged document
- Misc. documents

As in the previous example, these items were not logged into the evidence room; a physical search of both evidence rooms was made by a deputy director and the items were not found. The IFD could not

provide any documentation of the disposition of the evidence. An assistant attorney general, working with the IFD, believes some of the items were returned to the family and copies of the original evidence seizure documents were made for the case file.

The case file does contain some copies of customer files and policy information, but with the general descriptions on the evidence log, it is not possible to make an exact identification. Regardless, speculation about the disposition of evidence is unacceptable. The IFD should maintain clear records about seizure of evidence, storage of evidence, and disposition of evidence. IFD management recognized these problems. The evidence policy was updated in May 2008 and a new evidence recording system was purchased. The new IFD director is in the process of reviewing what has been done and making any necessary modifications.

Search Warrants Need Policy and Procedure Control

The IFD does not have policies outlining either the circumstances under which a search warrant will be requested or the internal procedure necessary to approve the execution of a search warrant. When asked to provide policies, the only document IFD staff found pertaining to search warrants was the search warrant operations plan. It is not known when this plan was written or by whom. This four-page document outlines steps to execute a search warrant but does not identify a management approval process. The final paragraph of this document states:

This document must be signed and/or approved by two parties prior to warrant service being conducted. If two signatures do not appear below, the warrant service shall not be conducted.

The case agent, the co-case agent, and the supervisor are listed as acceptable signatures. In our opinion, the supervisor's signature should be mandatory, as this provides evidence that management is aware of and approves the operational plan.

From our sample of 20 IFD cases, one contained a search warrant operations plan for an executed search warrant. However, the operations plan document contained no approval signatures at all. Consequently, there is no evidence that management was aware of or approved this warrant's plan.

Speculation about the disposition of evidence in the IFD's custody is unacceptable.

The search warrant operations plan reviewed contained no evidence that management was aware of or approved the warrant's plan.

Investigative Cost Calculations Need Policy and Procedure Control

Lack of investigative cost control policies and procedures creates possible inequities. *Utah Code* 31A-31-109 allows the IFD to recover investigative costs from guilty defendants. Any investigative costs recovered are then dedicated to the IFD. Because investigative cost methodology and required supporting documentation are not in IFD policies and procedures, the IFD lacks the ability to ensure equal treatment in all investigations. In fact, an allegation was made that investigative charges are influenced by the wealth of the defendant; the wealthier the defendant, the higher the investigative costs assessed regardless of the crime. The merit of this allegation could not be determined with the data available.

Without policies and procedures to standardize calculation methodology, the IFD lacks the ability to ensure equal treatment of defendants.

What can be determined is the lack of policies and procedures concerning investigative cost calculation. Without such controls, there is no standardized methodology to calculate investigative costs. When asked, three investigators provided three slightly different methodologies. Similarly, the level of supporting documentation maintained by the investigators is also not standardized. One maintained information on an electronic planner while another maintained information in a printed form.

For investigative costs to be defensible, the calculation methodology and the required supporting documentation should be standardized in policies and procedures. In our opinion, the methodology and documentation ought to be able to withstand challenges and should be maintained in the case file.

Further, the division should develop a policy outlining the order of payment when both investigative costs and restitution are collected. According to staff collecting these payments, if the judge stipulates the order of payment (i.e., restitution is to be paid first), then that stipulation is followed. If the judge does not stipulate, then the order of payment is discretionary; however, restitution to private individuals is always paid first.

One source was concerned that division investigative costs are repaid before restitution is made. A case was presented in which a defendant owed around \$143,000 in restitution and \$10,000 in

investigative costs. The division's investigative costs were paid first while over \$120,000 in restitution is still owed the insurer. A brief review of collection records supports the fact that investigative costs are sometimes paid first. In our opinion, a more important objective of the IFD's work is to provide restitution to a defrauded insurer, not to reimburse itself for its work.

Other IFD Management Controls Have Also Been Weak

A number of the IFD's basic management controls have either been in place but ignored or completely neglected. Specifically, these control weaknesses include:

- Poorly documented supervision of investigators' activities and case management
- Insufficient training in appropriate internal IFD office procedures

In addition, the IFD should ensure that proper purchasing procedures are always followed.

Basic management controls are particularly important within the IFD because IFD investigators are special function officers who have law enforcement powers while working. They carry weapons, make arrests, and obtain and execute search warrants. Being so empowered carries risks for the state. These risks are highlighted by the state risk manager who raised general concerns over police powers. These concerns, which follow, are heightened when police powers reside in agencies other than law enforcement agencies. Speaking generally, the state risk manager said:

Excessive or improper use of force claims generally are a huge concern for public entities. Nationally, they are the source of the largest jury verdicts; without question police misconduct claims are huge potential liability land mines. The problem is exacerbated by the fact that the cases are generally filed as constitutional 4th and 8th Amendment claims in federal court where our [state] liability caps do not apply. The claims often

Basic management controls are important within the IFD because IFD investigators have full law enforcement powers while working.

Police misconduct claims are potential liability land mines; these claims often assert inadequate training, supervision, or policies and procedures.

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Policies and procedures have already been identified as weak; supervision and training are weak also.

Adequate Management Supervision Is Not Apparent

The level of IFD management’s supervision of investigator activities is not well documented. In spite of a policy requiring periodic case status reports by investigators, no case status reports were found in the course of our review. Case closure reports, which were generally in the case files, did not contain evidence of management review and approval. This means that cases lacked evidence of ongoing management review and management approval of case closures. Case management appears to have been left to each individual investigator.

A 1999 policy, relevant to supervision, requires that case status reports be filled out by investigators 45 days after a case opens and every 60 days thereafter. In the 20 cases we reviewed, 18 should have had at least two case status reports, but none were found.

While case status reports were not found, case closure reports were. A case closure report is written by the investigator and contains reasons why the case should be closed. In our sample of 20 cases, the case closure reports were generally addressed to the IFD director; however, there was no evidence in the case file that the director had seen the report or approved the case’s closure. Two reports were addressed to a deputy director, and while the report states that the deputy director concurs with the closure, there is no evidence the deputy did, in fact, agree. Finally, two reports were addressed to no one and, again, there is no evidence management read and approved the closure.

According to the former director, case review was often done without any investigator contact, at the director’s preference and discretion. In our opinion, it is important that evidence of proper supervision and oversight be maintained, particularly in light of the state risk manager’s comments.

Case closure reports are made, but there is no evidence of management review and approval.

It is important that evidence be maintained of supervision and oversight.

For example, we reviewed an improper insurance billing case that was opened in 2004. An insurer complained that a second company had continued to bill for equipment after the equipment had been returned. The insurer supplied their case summary, a letter from the member confirming the date of return, and the claims submitted by the second company and paid by the insurer. All the evidence in the file was provided by the insurer. The investigator provided no additional information over the four years the case was open. In 2008, the case was closed. The closure report cited lack of evidence and passage of the statute of limitations as reasons for the closure. There was no information in the case file showing that the investigator had done anything more than accept the original information. There was also no information identifying any management oversight of the case.

Prior to 2008, all management supervision was performed by the former IFD director. In May 2008, the two deputy director positions were charged with supervising teams of investigators. In addition to these supervisory duties, the deputy directors have their own full caseloads. Currently, the deputy directors are trying to develop ways to supervise the cases of others while completing their own. This has proved to be difficult. For example, while one deputy has a goal of meeting periodically with each of his investigators and discussing every case open and assigned to them, these meetings have been infrequent.

Adequate Procedural Training Not Evident

While the division has ensured that training necessary to maintain special function officer status has been maintained by all investigators, adequate training on approved office procedures is not evident. Without clear policies and procedures to guide training, adequate, consistent office-specific procedural training is unlikely. Perhaps as a consequence of inadequate policies and procedures, investigators experienced different levels of office-specific procedural training when joining the IFD. Some investigators indicated that when they first came on, they were shown how to use the existing computer software, given a stack of cases, and expected to begin. Others were assigned to work under field training officers for varying lengths of time, the longest training period being about two months. In one case, the field

**In addition to
supervisory duties, the
two deputy directors
have their own full
caseloads.**

training officer was a member of management; in the other cases, the field training officer was an experienced investigator.

Training by field officers sounds reasonable, but the question remains as to what policies and procedures were being taught. Without an established policy and procedure manual, there can be no standardization of procedures taught by the field training officers. Clearly, evidence procedures were not taught in any standardized format, given the non-uniform condition of the division's case files.

While procedural training is lacking, the division has kept all of its investigators current with the in-service hours needed to maintain their special function officer status. In addition, at least one investigator has been sent to a basic and an advanced course offered by the National Insurance Crime Bureau. So, it is not true that IFD investigators are inadequately trained overall. However, we believe IFD investigators have had inadequate training in IFD-specific procedures primarily because there were no standardized office procedures.

As noted earlier, the new director is currently working on a policy and procedure manual for the IFD. We expect that when this manual is completed and approved, all investigators will be trained according to the new procedures.

Proper Purchasing Procedures Should Be Followed

When no state contract is available and the projected total price of a state purchase is over \$5,000, the Division of Purchasing should be involved in a bid solicitation. In fiscal year 2007, the IFD purchased eight emergency preparedness kits (\$1,570 per kit) for \$12,560. No state contract covered emergency preparedness kits of this type; the Division of Purchasing was not involved in a bid solicitation for this product. According to the assistant director of purchasing, this purchase was large enough that it should have been competitively bid through their division. Because it was not, it is unknown whether the IFD got the best product for the best price.

The IFD needs to take care when large dollar purchases (over \$1,000) are made and multiple state agreements are available from which to make the purchase. In this circumstance, informal price

Without established policies and procedures, there is no IFD-specific procedural teaching standard.

A \$12,560 purchase of eight emergency preparedness kits should have been bid through the Division of Purchasing.

comparisons among two or three of the agreements should be made and the lower price chosen. We reviewed two IFD purchases (one for \$3,100 and another for \$3,570) in which multiple state agreements were available. No documentation of price comparisons was maintained in either case; IFD personnel could not remember if price comparisons were made. Though not required by the Division of Purchasing, an informal record of the agreements considered and the prices offered seems a reasonable step to take.

Finally, the IFD should not have subdivided one high priced purchase into multiple lower priced purchases. We reviewed seven sequential invoices from one vendor for one day's work installing emergency vehicle lights on one division vehicle. All together, the work totaled \$3,100. Originally, the vendor supplied one invoice; upon IFD request, the single invoice was subdivided into seven invoices each under \$500. IFD personnel explained that purchases under \$500 could be made without prior departmental approval. While this practice did not appear widespread in the IFD, we do not believe subdividing a large invoice into several smaller invoices is appropriate.

IFD's Case Management System Is Insufficient

IFD's existing computerized case management system is insufficient for the division's needs and potentially hampers their effectiveness. IFD management has recognized the current system's inadequacy and is looking for a replacement system. As an example of the system's inadequacy, in fiscal year 2008 IFD statistics indicated investigators carried an average open caseload of 40 cases. When we gathered and manually counted cases open as of June 30, 2008 using the October 2008 database provided us, we found that investigators (exclusive of the director and the two deputy directors) carried an average open caseload of 61 (individual caseloads ranged between 41 and 81).

In our opinion, the existing system has contributed to a number of the problems existing between divisional management and staff. Poor case management tracking has prevented a balancing of investigators' caseloads, prevented identification of time needed for various case

A database request took two weeks and required the skills of an outside programmer.

types, and has not helped in preventing unduly long investigations. The system has also failed to provide accurate, timely, and necessary management control information. We would include the following as primary case management system problems:

- **Lack of System Flexibility**—While standardized reports can be produced, information outside these standardized reports is difficult to retrieve. As an example, we requested a database of all cases opened within a two-year time period. This request took two weeks and was outside the ability of anyone in the division. Retrieval required the skills of an outside programmer.
- **Lack of System Security**—Upon entering the case management system, any IFD employee can access any case and make changes. This staff ability, coupled with the interpersonal hostility within the IFD, made addressing allegations against individual staff members impossible to address with any degree of certainty. In effect, case information could not be held as trustworthy.
- **Lack of Logical Error Checks**—We observed duplicate cases, cases closing before they opened, and cases assigned to investigators that were recorded as opened and closed before the investigator was employed at the IFD.
- **Lack of Critical Alert System**—The system has no alert system that can identify when a case has not been worked for a period of time or when the statute of limitations is approaching. Investigators are left to manually track each case.

The limitations of the case management system are acknowledged by IFD management; a search for a new case management system is in process. In addition to the concerns listed previously, we believe IFD management should ensure that this new system also collects the following information by case: time to complete investigation (case turnover), outcome of investigation (i.e., if a case is accepted for prosecution) and, if prosecuted, restitution and investigative costs ordered. This information would allow the IFD to evaluate caseload and caseload mix.

Any IFD employee, upon entering the case management system, can access any case and make changes.

IFD management is currently searching for a new case management system.

In addition to helping with caseload analysis, case turnover and outcome data could be useful as one measure of investigator performance. In our interviews with investigators, one question they raised was why some investigators receive pay raises and others do not. While the issue of relative pay will probably always exist, quantitative, objective performance measures might help mitigate some of the merit pay questions. Performance measures using case turnover coupled with case outcome would be quantitative, objective measures in analyzing investigator efficiency and effectiveness. Measures such as these are used in other states, Texas and California for example, and it seems reasonable that Utah could adopt similar measures.

In summary, we found that IFD management needs to make improvements to certain portions of its operations as noted in this report. In particular, the IFD needs to refocus on its core mission—insurance fraud. Also, the IFD needs to strengthen the three areas cited by the state risk manager as commonly used to support police misconduct claims: policies and procedures, supervision, and training. Finally, the IFD needs to quickly replace its current management information system with one that is more flexible and secure. We believe improvements in these areas will strengthen the IFD's effectiveness and lessen the state's risk liability.

Recommendations

1. We recommend IFD management review work with task forces and limit work to those task forces whose cases have an insurance connection.
2. We recommend IFD management develop a screening system that ensures all cases investigated and prosecuted have an insurance connection.
3. We recommend IFD management develop appropriate policies and procedures, ensure each staff member has an up-to-date copy of the adopted policies and procedures, and ensure each staff member follows the adopted policies and procedures.

The new case management system should also provide the following information: time to complete investigation, outcome of investigation, and restitution and investigative costs awarded.

4. We recommend IFD management develop a systematic approach to case supervision and documentation.
5. We recommend IFD management develop a systematic approach to IFD-specific procedural training based on the adopted policies and procedures.
6. We recommend IFD management ensure that appropriate purchasing procedures are always followed.
7. We recommend IFD management replace the existing case management system with one that:
 - Produces information in a variety of formats
 - Provides internal system security
 - Contains logical error checks
 - Contains an alert system for inactive cases
 - Tracks time to complete an investigation
 - Tracks whether a case was accepted for prosecution
 - Tracks court-ordered restitution and investigative costs

Chapter III

Changing IFD Investigator Status to Law Enforcement Officer Not Necessary

We found no clear need to change the Insurance Fraud Division's (IFD's) investigator position from that of a limited special function officer (SFO) to a full law enforcement officer (LEO). Utah's use of SFOs appears to be working and allows the IFD to perform all necessary law enforcement duties needed to investigate insurance fraud.

Our review found that the benefit to the insurance industry and the public derived from insurance fraud investigators becoming full LEOs is not compelling. Nationally, LEOs generally do not outperform either SFOs or their non-police-empowered counterparts in other states in terms of insurance fraud conviction rates. In addition, changing to LEO status would increase costs to the insurance industry due to the 20-year public safety retirement plan for which LEOs qualify. The state would also assume an increase in liability risk with the extension of law enforcement authority to off-duty hours.

Use of SFO Status Was a Conscious Decision

Utah's use of SFOs within the Insurance Fraud Division was planned by the Legislature from the organization's inception; it was not a rash decision. IFD investigators are classified as SFOs in accordance with *Utah Code* 31A-2-104, which states:

An insurance fraud investigator . . . may be designated as a special function officer . . . by the commissioner, but is not eligible for retirement benefits under the Public Safety Employee's Retirement System.

This language has been in the *Utah Code*, virtually unchanged, since its insertion in 1995. Further, during the floor debate, the sponsor

IFD investigators are classified as SFOs in accordance with *Utah Code* 31A-2-104.

IFD investigators carry guns, make arrests, and execute search warrants in the course of investigating their cases.

highlighted the fact that investigators would not receive public safety retirement, and no legislators raised any concerns over that point.

As stated in *Utah Code* 53-13-105(1)(a), a special function officer is “a sworn and certified peace officer performing specialized investigations, service of legal process, security functions, or specialized ordinance, rule, or regulatory functions.” *Utah Code* 53-13-105(2)(a) and (c) further add that the spectrum of peace officer authority designated by statute to an employing agency can only be exercised while on duty and that state-issued firearms can be carried only while on duty.

Given the insurance and special function officer statutes, the IFD investigators function as police officers when investigating insurance fraud. As such, IFD investigators carry guns, make arrests, and execute search warrants in the course of investigating their cases.

The insurance commissioner has recently been petitioned by some of IFD investigators requesting a status change to LEO. Their arguments revolve primarily around their personal safety and defense when off the job. In addition, the petitioners believe that there is a public benefit should a fully certified, off-duty IFD investigator be present during the commission of a crime. We believe the justification for LEO status should be predicated upon the mission of the division and public need. In 1995, the Legislature established the IFD’s mission and deemed the duties did not justify LEO status. Statutorily, the IFD’s mission has not changed since 1995.

Some may believe the IFD’s involvement with drug task forces and other drug investigations warrant LEO status. We do not. As stated in Chapter II, we do not believe the IFD should be involved in any investigation that does not have a clear connection to insurance fraud.

Full LEO Status Does Not Translate to Higher Performance

States requiring LEO status for their insurance fraud investigators do not necessarily produce more fraud convictions than Utah’s SFO investigators. Of the 20 states reviewed, Utah is above average in both number of convictions per investigator and number of

convictions per 100,000 residents. Further, within the Utah IFD itself, the investigators performed similarly, in terms of number of convictions, regardless of previous law enforcement experience.

In February 2007, the Coalition Against Insurance Fraud published a progress report on state insurance fraud bureaus. This report identifies investigator law enforcement status, convictions per investigator, and convictions per 100,000 in population for 34 states plus the District of Columbia. (Convictions include plea bargains.) Conviction rate is a relevant outcome measure since it is through convictions that restitution is awarded to victims of insurance fraud and the ability to obtain a conviction rests, to a large degree, on the quality of the investigator's work.

Based on the information in this report, we identified 20 states with similar-sized fraud investigation units. We obtained 2008 conviction data from 18 of the 20 states; simultaneously, level of police powers was also obtained. The IFD originally reported 115 convictions for Utah. Based on our 2007 drug seeker conviction estimates, we reduced the number of convictions reported by the IFD to eliminate possible drug seeker convictions not involving insurance. This adjustment did not affect Utah's rankings relative to other states. Figure 3.1 shows the results of our inquiries.

Conviction rates are a relevant outcome measure, since it is through convictions that restitution is awarded.

Figure 3.1 Comparison of Police Powers and Convictions per Investigator Among States Surveyed. Utah's conviction rate compares favorably in spite of having limited police powers.

State	2008 Investigators	Police Powers	2008 Convictions	Convictions per Investigator
Nebraska	2	Full	77	39
South Carolina	4	Full	135	34
Kansas	2	No	49	25
Arizona	10	Limited	160	16
Utah	9	Limited	101	11
Kentucky	11	Full	97	9
Virginia	25	Full	216	9
Hawaii	7	No	55	8
New Hampshire	2	No	15	8
Maryland	13	No	76	6
Ohio	9	No	47	5
Colorado	4	Full	19	5
Texas	26	Full	116	4
North Carolina	20	Full	60	3
New Mexico	7	Full	12	2
Arkansas	8	Full	13	2
Minnesota	7	Full	11	2
Idaho	6	No	7	1
Georgia	6	Full	n/a	
Iowa	3	Limited	n/a	

Nevada and Mississippi did not respond to our request for information. 2008 information was not available in Georgia and Iowa.

55 percent of the states surveyed have LEOs as investigators, 30 percent have investigators with no police powers, and 15 percent have SFOs as investigators.

Of these 20 states, 11 states (55 percent) require insurance fraud investigators to be LEOs, while investigators in 6 states (30 percent) are allowed no police power. Some of the LEO states reported that their jurisdiction is limited to insurance fraud. Three states (15 percent), including Utah, are SFOs, allowing investigators police powers only while on duty. Using number of convictions per investigator as a measure of effectiveness, Utah's IFD investigators compare favorably.

Utah's IFD investigators have the fifth-highest conviction rate per investigator in this comparison. Again, it is through convictions that restitution is awarded to victims. On average, the conviction rate per investigator for these 18 states is 10.3; Utah's rate of 11 compares favorably.

In addition to conviction rates per investigator, we also reviewed convictions per 100,000 state residents. Again, Utah compares favorably, as shown in Figure 3.2.

Figure 3.2 Comparison of Police Powers and Convictions per 100,000 Residents Among States Surveyed. Utah's conviction rate per 100,000 residents compares favorably in spite of having limited police powers.

State	2008 Investigators	Police Powers	2008 Estimated Population	Convictions per 100,000 Residents
Nebraska	2	Full	1,783,432	4.32
Hawaii	7	No	1,288,198	4.27
Utah	9	Limited	2,736,424	3.69
South Carolina	4	Full	4,479,800	3.01
Virginia	25	Full	7,769,089	2.78
Arizona	10	Limited	6,550,180	2.44
Kentucky	11	Full	4,269,245	2.27
Kansas	2	No	2,802,134	1.75
Maryland	13	No	5,633,597	1.35
New Hampshire	2	No	1,315,809	1.14
North Carolina	20	Full	9,222,414	0.65
New Mexico	7	Full	1,984,356	0.60
Texas	26	Full	24,326,974	0.48
Idaho	6	No	1,523,816	0.46
Arkansas	8	Full	2,855,390	0.46
Ohio	9	No	11,485,910	0.41
Colorado	4	Full	4,939,456	0.38
Minnesota	7	Full	5,220,393	0.21
Iowa	3	Limited	3,002,555	n/a/
Georgia	6	Full	9,685,744	n/a

Nevada and Mississippi did not respond to our request for information. 2008 information was not available in Georgia and Iowa.

Utah has the third-highest insurance fraud conviction rate of the 18 states supplying 2008 conviction information. On average, the conviction rate per 100,000 residents of these 18 states is 1.7, while Utah's conviction rate per 100,000 residents is 3.7. Again, Utah compares favorably with the other states.

Conviction rates were also compared among Utah's IFD investigators. Since three of Utah's IFD investigators had former law enforcement experience, we looked to see if their conviction rates per cases investigated were significantly higher than those of investigators who lacked prior law enforcement experience. A significant difference in conviction rates per cases investigated was not observed. Based on

LEO status does not result in higher insurance fraud conviction rates.

the comparisons with other states as well as internal comparisons among the IFD investigators, it appears that LEO authority/experience does not result in a measurable benefit increase through higher insurance fraud conviction rates.

Changing IFD Investigators to LEOs Would Increase Costs

If IFD investigators were required to be LEOs, they would qualify for public safety retirement. Public safety 20-year retirement, with its higher contribution rate, is a more costly benefit than IFD's current plan, traditional 30-year retirement. While creating an increase in benefit costs, it is unlikely that changing to LEOs would affect salaries.

Change Would Increase Benefit Costs

For fiscal year 2009, under the 30-year noncontributory retirement plan, the employer pays an amount equal to 14.22 percent of an employee's gross wages (gross wages include overtime pay) toward that employee's retirement. For fiscal year 2009, under the 20-year public safety retirement plan, the employer pays an amount equal to 29.55 percent of an employee's base salary (overtime is not included) toward that employee's retirement. (This 20-year public safety employer contribution rate is projected to go up to 30.18 percent in fiscal year 2010.)

The following hypothetical example illustrates the cost differences between the two plans. In this example, the following assumptions are made:

- The employee begins at Investigator III entry step 47.
- The employee receives two steps every other year until the maximum step (step 70) is reached.
- No cost-of-living adjustments, market adjustments, or overtime are assumed.

Under these assumptions, the employee's total wages during 20 years are a little over \$1 million. Under 20-year retirement, the employer would pay around \$301,330 in retirement contributions. In 30 years, the same employee's total wages are a little over \$1.74 million. Under 30-year retirement, the employer would pay around

Employer costs are higher under the public safety 20-year retirement plan.

\$247,540 in total retirement contributions, yet only \$145,000 during the 20-year time period. So, under the 20-year system, the employer must come up with more money quicker.

If interest is considered, the difference between the two systems widens somewhat. At 4 percent interest, the present value of the employer's total contribution under the 20-year plan is around \$197,720. Under the 30-year plan, the present value of the employer's total contribution is close to \$133,000, a \$64,720 savings per employee from the employer's perspective.

Change Would NOT Result in Higher Salaries

While retirement costs would increase with law enforcement officer status, it is less likely that significant wage increases would occur. According to DHRM representatives, the investigator position descriptions are benchmarked to the highway patrol trooper position. Since highway patrol troopers are full law enforcement officers, positions benchmarked to the trooper position already receive any salary benefit coming from full law enforcement officer status.

The IFD's investigators appear to believe that were they to become law enforcement officers, their salaries would become the same as what they see as similar positions in the Attorney General's Office. According to DHRM representatives, this outcome is unlikely. The DHRM establishes appropriate salary ranges for all executive branch positions. The Department of Insurance and the IFD are within the executive branch. If funds are available, executive branch agencies have the flexibility to pay anywhere within the established ranges; however, agencies may not pay outside the established range.

If an agency is not within the executive branch, then that agency is not bound by DHRM's classification/compensation system. The Attorney General's Office is not within the executive branch and has developed an independent classification/compensation system. As long as funds are available, the Attorney General's Office may pay salaries of its choosing. While investigators in the Attorney General's Office have higher salary ranges than investigators in the executive branch, DHRM cannot use that fact to increase executive branch investigator salary ranges. DHRM is statutorily restricted as to how law enforcement salary ranges will be gauged.

IFD investigators already receive any salary benefit coming from LEO status since investigator salary ranges are benchmarked to the highway patrol trooper, an LEO position.

Risk Management’s counsel believes investigators should not become LEOs unless there is an absolute need; the liability risk is too high.

According to Risk Management’s counsel, “if there is not an absolute need for these investigators to become LEOs, then they should not; the liability risk is too high.” Our analysis did not find a benefit from investigators having LEO status. On the other hand, our analysis did find increased employer costs associated with the change. Therefore, we are not compelled to believe that IFD investigators should become LEOs.

Recommendations

1. We recommend IFD investigators remain SFOs.

Appendix

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Jon M. Huntsman, Jr.
Governor

Gary R. Herbert
Lieutenant Governor

State of Utah

INSURANCE DEPARTMENT

D. Kent Michie
Commissioner

November 12, 2008

Mr. John Schaff
Legislative Auditor General
Utah Legislature
315 House Office Building
State Capitol Complex
Salt Lake City, UT 84114

Re: Proposal for Addition to Scope of Legislative Audit of Insurance Fraud Division

Dear Auditor General Schaff:

You and I have on numerous occasions commented on the fact that I have always seen your organization in the role as the state's management consulting firm. It is in this spirit that I write to you today.

I understand that your staff may soon launch an audit of the operations of the Insurance Fraud Division, one of the operational units of the Insurance Department. While I do not know the motivation behind nor the scope of this proposed audit, nonetheless, I would like to propose an addition to its scope.

As you may know, the criminal fraud investigators (approximately 10) that we employ are deployed as "special function" officers under the Insurance Code. A suggestion has been made, that because of the nature of the risks involved in the investigation and prosecution of this type of criminal activity, that perhaps the officers there should be trained and deployed as "category I, peace officers."

There are points of view on both sides of this question and I do not to argue either side here, but I do believe that the question does constitute a legitimate public policy issue and one that would benefit from your management consulting expertise and a thorough study.

Insurance fraud affects every Utah family to the tune of costing them in excess of \$1,000/family/year. This is a serious negative impact on every Utahn; a tax we cannot afford to continue to pay. We need to fight and prosecute insurance fraud in the most effective manner possible. Hence we need well trained capable and highly motivated people to investigate this criminal activity.

The question is: Should insurance fraud investigators be trained and deployed as "Category I Peace Officers," or is it sufficient given the everyday circumstances of their professional tasking to train and deploy them as "Category II, Special Function Officers."

There may be some budget associated issues that attach to this decision as well. In addition, we may be able to learn something from the experience of other states. But mostly, I want to know what is the right thing for Utah to do in light of our specific circumstance.

Therefore, if it pleases your Audit Committee, we would propose that the scope of your audit be expanded to include this policy question.

For our part, we are anxious to share our observations, experience and preliminary opinions. But we defer to those where public policy is their main charge.

Please feel free to call for further comment and clarification.

Sincerely,

A handwritten signature in cursive script that reads "D. Kent Michie". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

D. Kent Michie
Commissioner

Agency Response

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Jon M. Huntsman, Jr.
Governor

Gary R. Herbert
Lieutenant Governor

State of Utah

INSURANCE DEPARTMENT

D. Kent Michie
Commissioner

May 26, 2009

Mr. John M. Schaff, CIA
Auditor General
Office of the Legislative Auditor General
W315 State Capitol Complex
Salt Lake City, UT 84114

Dear Mr. Schaff:

At the outset of our response to Report No. 2009-09, *A Performance Audit of the Insurance Fraud Division*, please accept our assessment of your audit team and process. The audit was performed by Janice Coleman, Audit Supervisor and Tim Osterstock, Audit Manager. The audit was professional and timely. Both were cordial and professional over the course of the audit. We congratulate you and them for the work that was done in the audit which we believe will assist management to serve the public interest and become more efficient and focused on detecting and eliminating fraud in the insurance market.

We find your performance audit to be balanced and fair. For instance, we note that Chapter III of the report, focused on the law enforcement status of the division's criminal investigators. I previously asked you to include the question of whether full law enforcement officer status would be beneficial to the performance of the insurance fraud division in the performance audit. See a copy of my letter attached for your convenience. In concluding that a change of status would not translate to higher performance, the report compared the Utah Insurance Fraud Division with similar divisions in other states. The division's conviction rate per investigator compared favorably with twenty other states. In fact, the division has the fifth highest conviction rate in that group. The division's conviction rate per 100,000 residents was third highest in the comparison cohort. We agree that the division is performing at an above average rate.

The report also found a number of operational issues that did not prevent the division from achieving above average performance results. We agree that the issues in the report need to be resolved. In fact, we believe that resolution of these issues will make the division's performance even better. We are convinced that the division needs to discipline itself to the mission identified in the report. Maintaining proper mission focus is inherent in a police environment as the successful investigation of criminal activity sometimes takes a meandering path before a case is ready for prosecution. Insurance fraud investigations may be more prone to mission drift given the types of crimes associated with defrauding insurance companies. Armand Glick, our new division director, has already begun retrenching the division's efforts toward investigations that involve insurance fraud.

Another concern highlighted in the report was the need to strengthen and enforce the division's internal policies and procedures—not only those relating to fraud investigations but also internal controls over data collection, documentation, acquisition and control of evidence, investigator supervision, and training in the division's policies and procedures. We point out that in spite of apparent deficits, the report found no circumstance in which the State was actually subjected to specific and quantifiable risk.

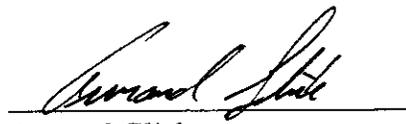
We believe that the division had previously recognized some of the areas of concern because the caseload growth dictated better policies and procedures, more effective and consistent supervision and better internal controls over evidence and information. Examples of this awareness are found in the report where the auditors acknowledge that a new policy and procedures manual had been initiated before the audit. The auditors were aware that the division had begun to revise its policy and procedures manual before the audit was initiated. Another is the mention of the acquisition of evidence documentation and storage software prior to the beginning of the audit. We are proud to state that before the audit was completed the new and revised division policy and procedures manual was issued and implemented in the division. In fact, I am recommending to the National Association of Insurance Commissioners that the division's policy and procedures manual be considered for adoption as a model handbook for all insurance department fraud divisions in the United States.

Mr. Schaff, we acknowledge the findings your team has made and have moved to ensure that they are implemented in the division. We thank you for this valuable management consulting service that you provide to state agencies—providing consulting services regarding best practices in managing state agencies. We believe that the recommendations your team has made will help us to raise the performance of the division even higher. We believe also that as the performance of the division continues to elevate, that it will have an impact on the price consumers pay for their insurance products.

We encourage the Legislature to adopt funding for the division that will permit it to accomplish its mission. National data on health insurance fraud indicates that every dollar spent investigating health insurance fraud returns eleven dollars to the health care sector (www.insurancefraud.org/stats.htm, 2009). This is true consumer protection.

Sincerely,

D. Kent Michie
Insurance Commissioner


Armand Glick
Insurance Fraud Division Director