

*Office of the*  
**INSPECTOR GENERAL**



**R E P O R T O F I N V E S T I G A T I O N**

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Agency: Georgia Department of Revenue

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Date of Report: September 20, 2021  
Amended September 21, 2021

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**Scott McAfee, Inspector General**



## Report of Investigation

File No. 20-0032-I

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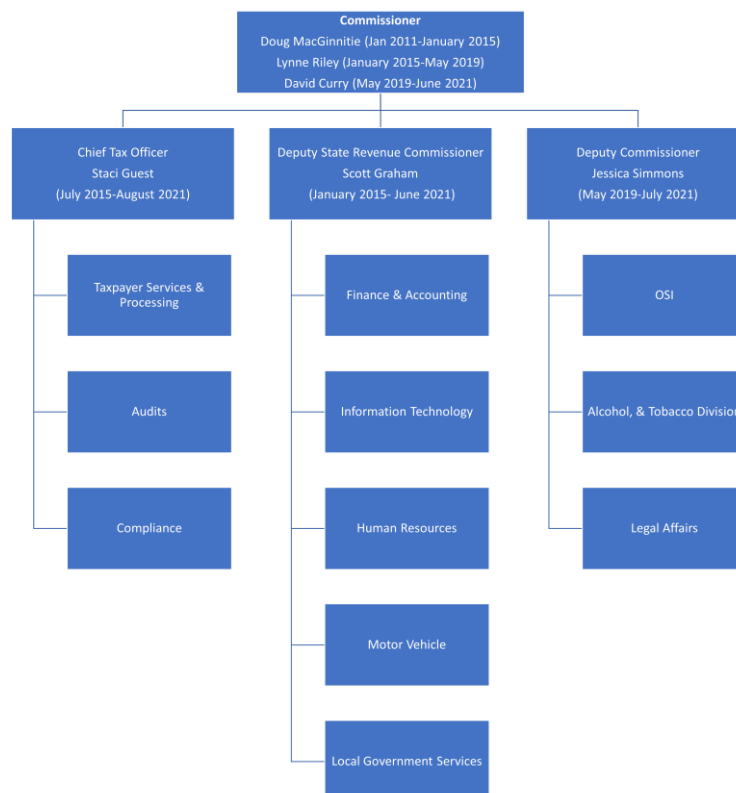
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## I. BACKGROUND

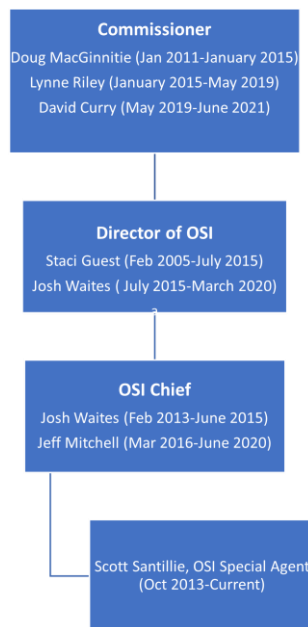
This report outlines an investigation conducted by the Office of the State Inspector General (OIG) into allegations against former Office of Special Investigations (OSI) Director Joshua Waites of the Georgia Department of Revenue (hereinafter “DOR” or “the Department”). DOR is responsible for the collection of taxes and fees from individuals and businesses. In Fiscal Year (FY) 2020, the Department collected \$23.7 billion in gross tax revenues and distributed \$6.1 billion in sales tax revenues to counties and municipalities. Departmental operations span 10 divisions and employ over 1,000 people.

As Director of OSI, Waites oversaw a division within DOR consisting of approximately 40 full-time and temporary positions and featuring an annual budget of approximately \$8 million in FY 2019. The special agents within OSI investigated a range of criminal violations including, but not limited to, tax evasion, identity fraud, motor fuel and odometer fraud, commercial gambling, and internal DOR investigations. Director Waites began working with DOR in 2013, having previously worked for the Clayton County Police Department and Clayton County Sheriff’s Office.

**Figure 1: DOR Organizational Chart**



**Figure 2: DOR OSI Organizational Chart**



## **II. BASIS FOR THE INVESTIGATION**

On January 24, 2020, former Deputy Attorney General David McLaughlin referred to OIG a complaint his office received from Chris Anulewicz, Partner at Balch and Bingham, LLP. The complaint alleged Director Waites falsified an employment application and lied about his educational history. Anulewicz obtained the information through open records requests while representing Todd Chrisley in a civil lawsuit filed against Director Waites.

Following receipt of the initial complaint, OIG met with Anulewicz on February 4, 2020, to gather additional details concerning the falsified application. Anulewicz raised other allegations against Director Waites, including concerns with Director Waites' background, prior complaints filed by private citizens against Director Waites, and the use of state asset forfeiture funds collected by DOR through civil asset forfeiture.

OIG opened an administrative and criminal investigation into the matter. Initially, OIG limited the investigation to Director Waites' employment application. OIG eventually determined that Director Waites provided false information on the July 2015 employment application related to his appointment as Director of the OSI. Specifically, Director Waites represented that he had obtained an Associate Degree in Criminal Justice from the University of Northwest Florida. OIG verified through interviews with Director Waites and the National Student Clearinghouse that

Director Waites does not have a degree from the University of Northwest Florida or any other educational institution. OIG referred the matter to the Prosecution Division of the Attorney General's Office for review and prosecution.

After concluding the initial investigation, OIG opened a second administrative and criminal investigation to address the remaining allegations, including a review of Director Waites leadership of OSI. This in turn led to new allegations concerning other DOR personnel. The scope of this report is limited to the administrative aspects of this second investigation, including a substantive review of the most material allegations and OIG's findings. In addition, in furtherance of its agency mandate, OIG offers several recommendations for DOR's consideration.

### **III. ACTION TAKEN IN FURTHERANCE OF THE INVESTIGATION**

To complete this investigation, OIG conducted over 40 interviews, analyzed over 250,000 emails and 2.7 terabytes of data, and reviewed official documents, policies, procedures, correspondence, and applicable regulations. Throughout the investigation, OIG worked closely with DOR and numerous other State agencies, including the Office of the Attorney General, Georgia Bureau of Investigation, Prosecuting Attorney's Council of Georgia, and Department of Administrative Services.

#### IV. ALLEGATIONS, FINDINGS, AND RESULTS

***Allegation 1: DOR OSI violated state law by failing to properly remit state asset forfeiture funds to the state general fund.***

State law requires that any currency collected by a state agency as a result of civil asset forfeiture is subject to appropriation from the general fund. *See* O.C.G.A. § 9-16-19(f)(4)(B)(ii). Thus, when civil asset forfeiture funds are distributed to a state agency in accordance with an order of distribution issued by the court, the funds must then be remitted to the state treasury. Under the leadership of Director Waites, DOR OSI failed to properly remit \$5,302,949.37<sup>1</sup> collected via state asset forfeiture from July 1, 2015, to the date of Director Waites' termination on March 11, 2020. Instead, DOR OSI spent approximately \$3,129,162.40 on what DOR OSI deemed "proper prosecutorial purposes." *See* O.C.G.A. § 9-16-19(a)(5). These purchases included reimbursement for work-related travel expenses, software licenses for forensic computer equipment, and payments to financial institutions for records produced in response to legal process. However, several expenditures were, at best, questionable and would likely be deemed wasteful and unnecessary. These purchases included, but were not limited to, \$6,660 on Fitbit devices for DOR personnel, approximately \$40,000 on fitness equipment, approximately \$321,000 for office furniture, and approximately \$800,000 on vehicles. Because each purchase made by DOR OSI using civil asset forfeiture funds was unlawful, OIG did not conduct a full audit of all expenditures. As of August 14, 2020, after OIG's recommendation, DOR remitted the remaining funds in the DOR state asset forfeiture account, \$2,173,786.97, to the Office of the State Treasurer.

This misdirection of funds did not stem from a simple misunderstanding of the law. OIG discovered that Director Waites repeatedly disregarded legal advice provided by the Prosecuting Attorneys' Council of Georgia (PAC), and intentionally mislead DOR leadership regarding DOR OSI's ability to collect and spend civil asset forfeiture money. DOR leadership relied on these misrepresentations and believed the expenditures were appropriate and approved by PAC until informed otherwise in March 2020.

The communications between Director Waites and PAC took place between February 2017 and September 2019. Other than these communications, OIG is not aware if Director Waites took

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<sup>1</sup> Total for state asset forfeiture funds received by the Department of Revenue (as reported to the Prosecuting Attorneys' Council of Georgia pursuant to O.C.G.A. § 9-16-19(g)(3)(A)) between July 1, 2015, and March 11, 2020.

other steps, if any, to verify the legality of the DOR OSI's retention and expenditure of civil asset forfeiture funds.

Specifically, OIG collected and reviewed emails wherein Director Waites contacted U.S. Department of Justice Law Enforcement Coordination Manager and Special Assistant for Intergovernmental Affairs, Didi Nelson, on February 13, 2017, inquiring whether federal and state asset forfeiture funds could be used for collegiate courses. Ms. Nelson provided Director Waites with various federal guidelines and referred him to PAC State Prosecutor (SP) Gary Bergman, a subject matter expert on civil asset forfeiture in Georgia.

From 2017 to 2019, Director Waites contacted SP Bergman via email and phone with questions concerning the use of civil asset forfeiture funds for various items, including collegiate coursework, the hiring of a retired tax commissioner or lawyer to preside over administrative hearings related to the department, and expenses related to a shooting competition. SP Bergman did not respond substantively by email during this time period, but when interviewed by OIG, SP Bergman stated that he routinely informed individuals who contacted him that state agencies are legally required to remit civil asset forfeiture money to the general fund.

In subsequent emails, however, SP Bergman did provide clear and substantive responses regarding the use of state civil asset forfeiture funds. On July 26, 2019, prompted by inquiries from newly appointed DOR Commissioner Curry, Director Waites emailed SP Bergman asking whether it was permissible to pay for certain training programs with state forfeiture funds collected by DOR OSI. On July 29, 2019, SP Bergman responded (**Figure 3**):

*"I am not sure how to answer your question because of the fact that your office is a State Agency. Generally, expenses associated with training are considered an "official law enforcement purpose" under 9-16-19 (a)(4). However, the expenditure of forfeited currency for "official law enforcement purposes" is limited to local law enforcement agencies and multijurisdictional task forces. See OCGA § 9-16-19 (f)(4)(A)(ii). However, that is not the case for State Agencies. It was (and still is) the intent of the General Assembly that forfeited currency that would be given to a State Agency under an order of distribution be placed in the general fund of the state and subject to appropriation, although the statute does suggest from a list certain ways in which the forfeited funds could be appropriated. See*

*OCCA § 9-16-19 (f)(4)(B)(ii). I am sure this is not the response you expected and I am happy to discuss this with you...”*

That same day, on July 29th, Director Waites sent a new email to SP Bergman referencing a phone call and, without referring to state civil asset forfeiture funds, asked (**Figure 4**):

*“Thank you for taking the time to speak with me this morning. I wanted to summarize our conversation, will you let me know if this is accurate.*

*My division is allowed to pay for training for Revenue employees outside of my division that are assisting in our law enforcement mission. Specifically, training like Association of Certified Fraud Examiner Certification (ACFE), Association of Certified Money Laundering Specialist (ACAMS) and some advanced leadership training for help with our training and hiring functions. We can also purchase equipment like computers used for our case management system and other systems used by our IT department. Thank you for your time and help as always.”*

SP Bergman responded by email that same day:

*“With the caveat that I mentioned during our phone conversation regarding the funds in your possession, I would say that this would be an acceptable expenditure of the funds. As always, this is just my own personal opinion based on what you have told me.”*

When interviewed by OIG, SP Bergman stated that the caveat referenced in his response was that DOR should not retain any state civil asset forfeiture funds. According to SP Bergman, the remainder of the email response was hypothetical in nature, explaining that the types of expenditures outlined by Director Waites would be acceptable if DOR properly possessed the money.

Director Waites later forwarded a copy of SP Bergman’s second July 29th email to senior DOR leadership, including Deputy Commissioner Scott Graham, and did not include SP Bergman’s original response indicating that DOR should remit the funds to the state treasury (**Figure 5**). Instead, Director Waites wrote:

*“I have spoken with and emailed Gary Bergman the Forfeiture expert from the Prosecuting Attorneys Council. He has agreed that using forfeiture funds for employee training and IT equipment that enhances law*



*enforcement is acceptable. I have attached a memo from me to you and the email chain between myself and Gary. He mentions a caveat to our funds that was in reference to a separate discussion of what types of cases we work and how it applies to forfeiture and how judges write the orders giving us the money not a reference to the above.”*

The memorandum written by Director Waites and attached to his email (**Figure 6**) claimed that PAC approved of the proposed expenditures and argued that state asset forfeiture funds could be used to purchase training, professional certifications, and computer equipment. The memorandum failed to inform senior DOR leadership of the legal requirement to remit state asset forfeiture funds to the state treasury, and specifically requested the use of “OSI State Forfeiture Funds to pay for [training programs and equipment].”

Less than two months later, on September 23, 2019, Director Waites contacted PAC Executive Director (ED) Pete Skandalakis asking whether DOR OSI state asset forfeiture funds could be used to hire a Special Assistant Attorney General (SAAG) to prosecute cases for DOR. Referencing a prior phone call, Director Waites wrote (**Figure 7**):

*“Per our conversation do you believe that it is an acceptable use of our forfeiture funds to pay for a Special Assistant Attorney General (SAAG) via contract to help prepare and prosecute criminal cases for our office.”*

On September 24, 2019, ED Skandalakis replied:

*“You asked if I believe that it is an acceptable use of your forfeiture funds to pay for a Special Assistant Attorney General (SAAG) via contract to help prepare and prosecute criminal cases for your office.*

*As we discussed, I and others in my office believe that forfeiture funds distributed to the State based on the role a state agency played in the forfeiture, should be sent to the state treasury to be appropriated for one of the listed uses in O.C.G.A. § 9-16-19 (f)(4)(B) (ii). Second, it is difficult to answer your question because most of my experience is that of a prosecutor and a member of the Judicial Branch. Since your agency is a part of the Executive Branch of State Government, I recommend you check with your legal representatives in the Attorney General’s office, as they would be in the best position to guide you in this matter. For example, their advice and*

*interpretation of the law may take in to account rules and regulations of which I am not aware.*

*Nevertheless, when answering questions for our state prosecutors concerning the appropriated use of forfeited funds, we have we have directed them to the legislature's command that such funds must be used for an "official prosecutorial purpose" as defined in O.C.G.A. § 9-16-19 (a) (5). Contract labor may be an appropriate use for such funds under this paragraph.*

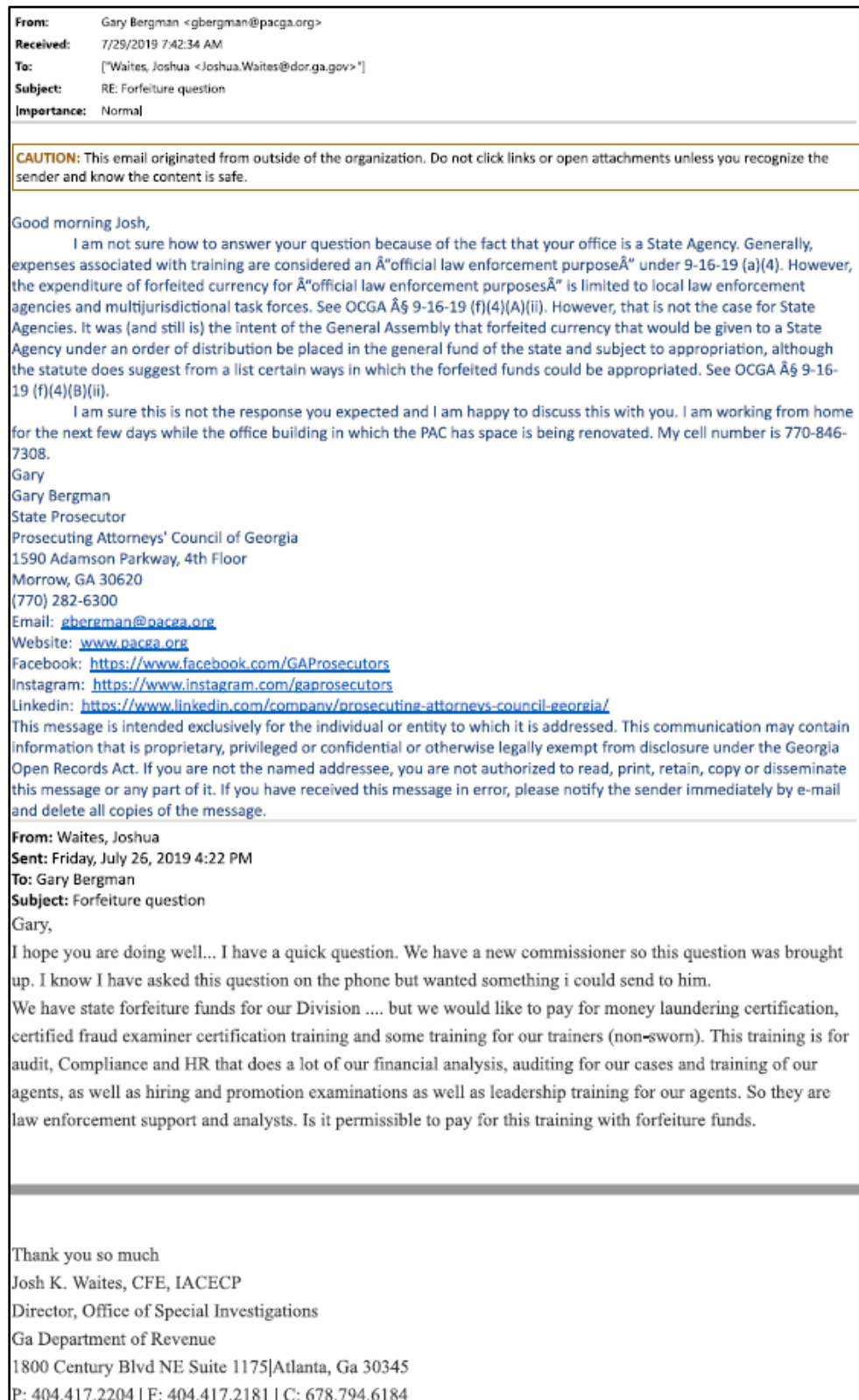
*Again, I would encourage you to speak with someone in the Attorney General's office about this matter. I do hope that this information is of some help to you."*

That same day, Director Waites forwarded ED Skandalakis' response to senior DOR leadership, including Deputy Commissioner Jessica Simmons (**Figure 8**). However, Director Waites edited the response and removed ED Skandalakis' instruction that DOR, as a state agency, should remit state asset forfeiture funds to the state treasury. In an effort to conceal the omission, Director Waites appears to have added a capitalized "W" ("When answering questions . . ."), but failed to use original email's font color.

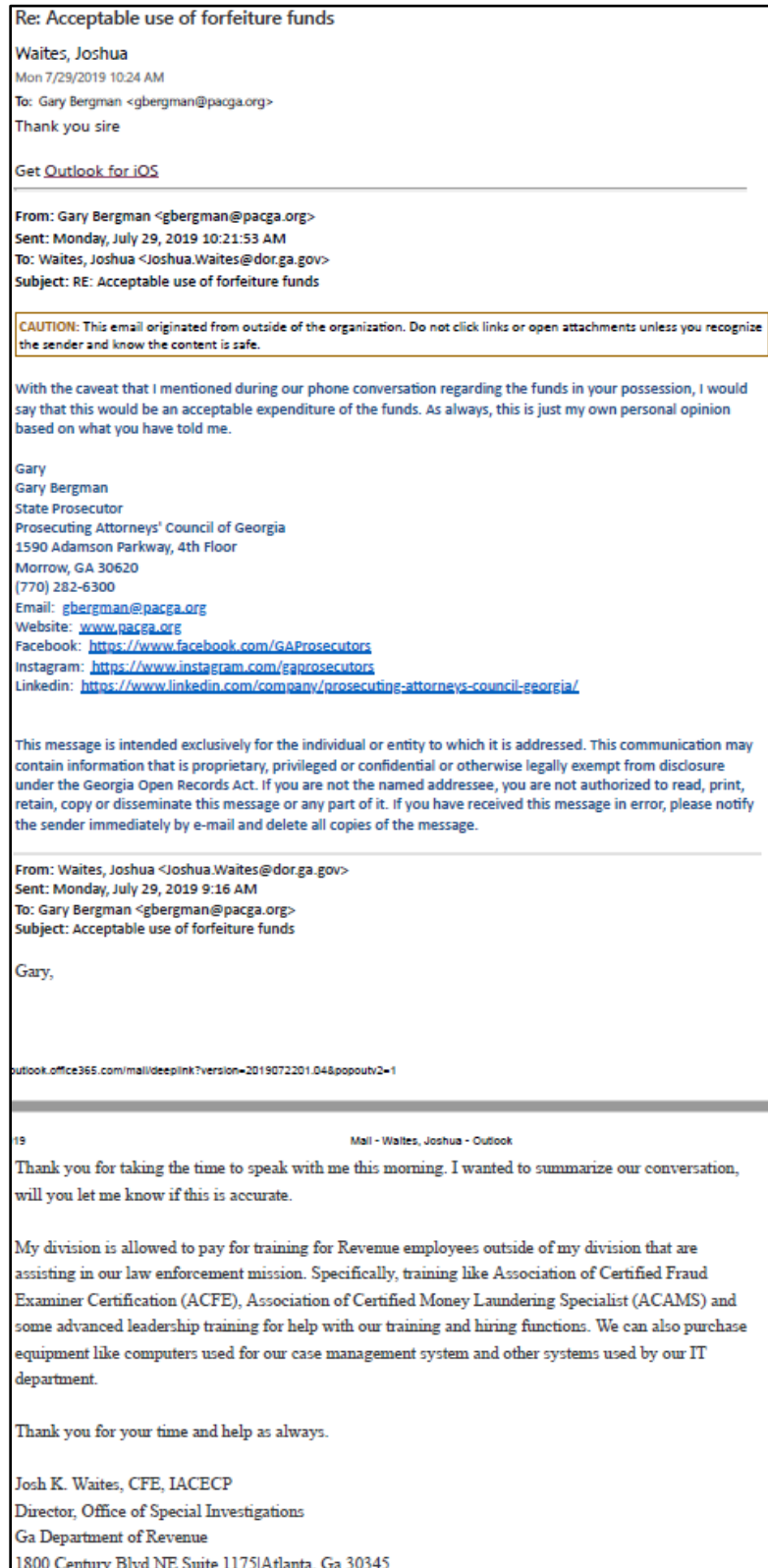
OIG's investigation confirmed that Director Waites deliberately manipulated the legal opinions provided by PAC and deceived senior DOR leadership about the proper use of state asset forfeiture funds. OIG has referred this matter to the Office of the Attorney General's Prosecutions Unit for criminal prosecution.

Based on these findings, OIG substantiated the allegation.

**Figure 3:** Email from SP Bergman to Director Waites on July 29, 2019



**Figure 4:** Email from Director Waites to SP Bergman on July 29, 2019



**Figure 5:** Email from Director Waites to DOR leadership on July 29, 2019 (with Figure 4 as attachment)

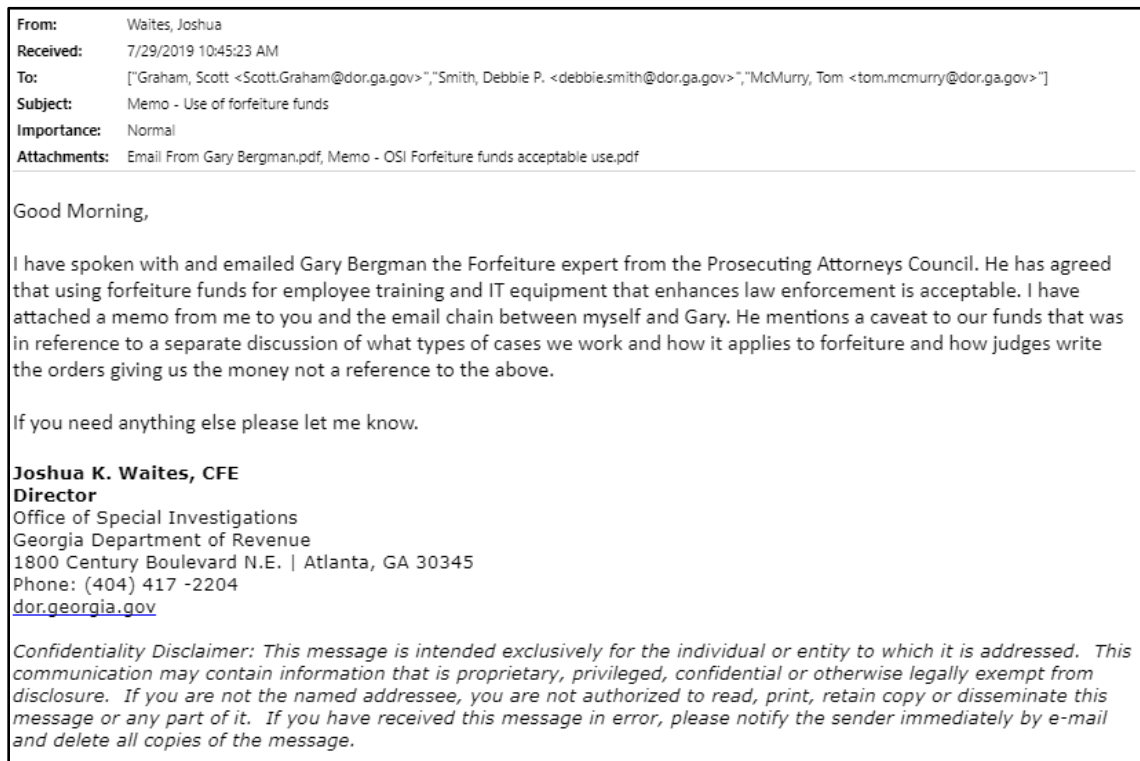


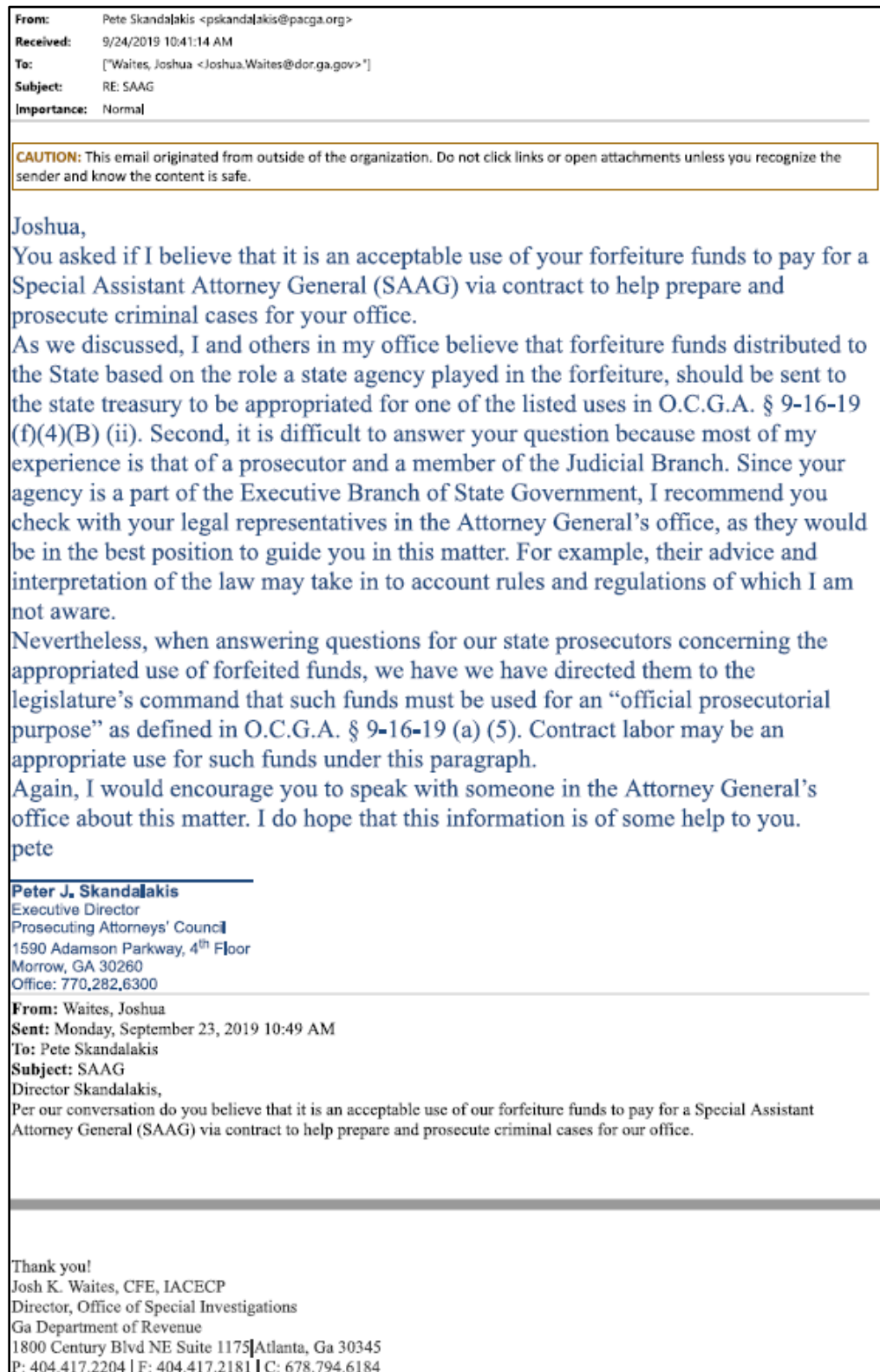


Figure 6: Memo attached to Director Waites Email from Figure 3

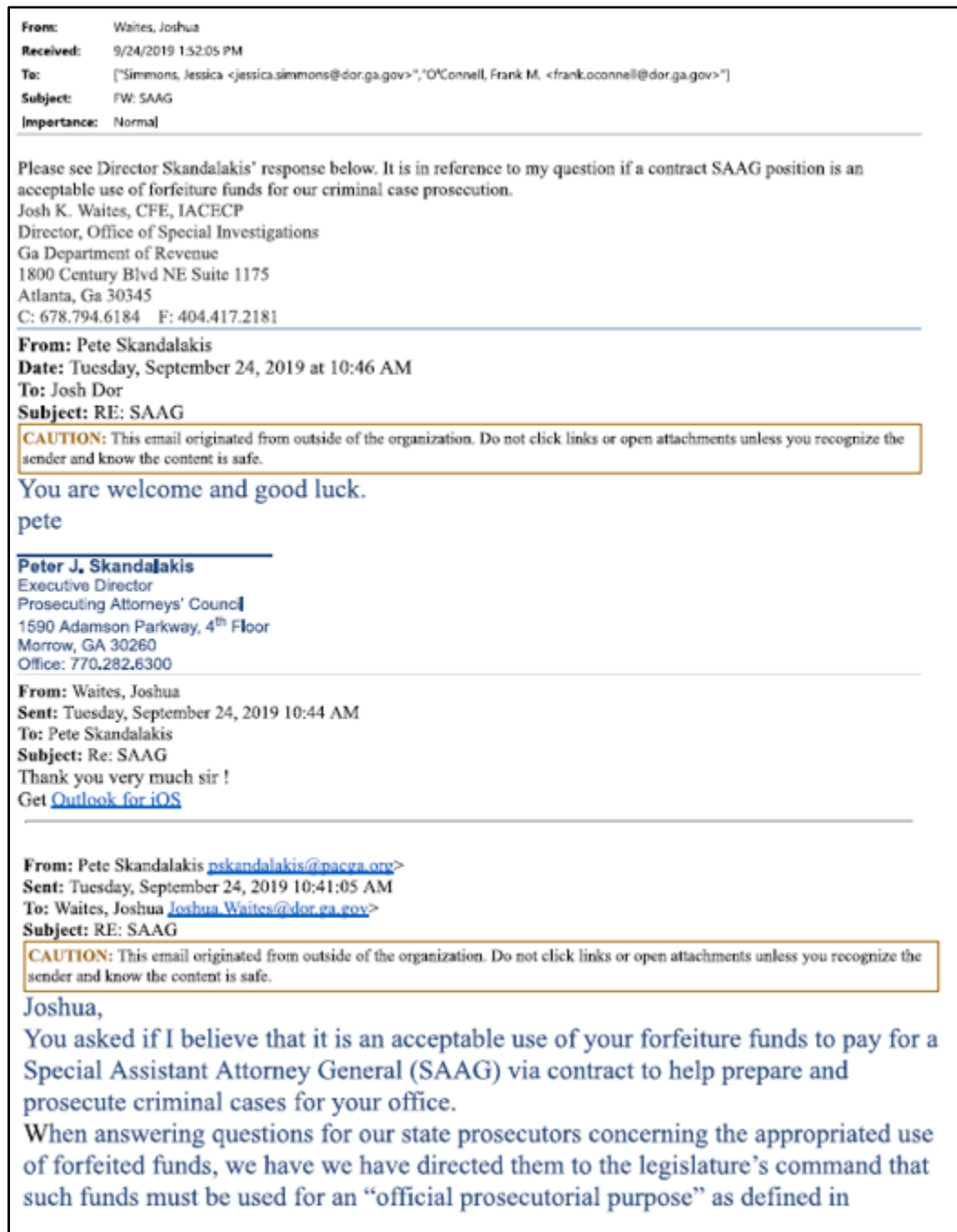
		State of Georgia Department of Revenue Administrative Division – Office of Special Investigations	Information Memorandum
To:	Deputy Commissioner Scott Graham Director Debbie Smith CIO Tom McMurry		
From:	Director Joshua Waites 		
Date:	July 28, 2019		
Re:	Use of State Forfeiture Funds		
<p>On July 28, 2019 I spoke with Gary Bergman of the Georgia Prosecuting Attorneys Council (PAC), he is the asset forfeiture expert at PAC. PAC is the agency tasked with training agencies on asset forfeiture guidelines as well as receiving the annual asset forfeiture spending report from each agency. I asked him if it was an acceptable use of forfeiture OSI's forfeiture money to pay for advanced training and equipment for employees of the department outside of our division; if that knowledge and equipment would be used to enhance our law enforcement mission. He stated it is an acceptable to use those funds for those purposes and pointed me to O.C.G.A. 9-16-19 (a)(4) –</p> <p><a href="https://law.justia.com/codes/georgia/2017/title-9/chapter-16/section-9-16-19/">https://law.justia.com/codes/georgia/2017/title-9/chapter-16/section-9-16-19/</a></p> <ul style="list-style-type: none"><li>• (4) "Official law enforcement purpose" means expenditures associated with investigations; <b>training</b>; travel; the <b>purchase</b>, lease, maintenance, and improvement of <b>equipment</b>, law enforcement facilities, and detention facilities; capital improvements; victim assistance and witness assistance services; the costs of accounting, auditing, and tracking of expenditures for federally shared cash, proceeds, and tangible property; awards, museums, and memorials directly related to law enforcement; drug and gang education and awareness programs; the payment of matching funds for state or federal grant programs that enhance law enforcement services to the community or judicial circuit; and reimbursement to a governing authority for a pro rata share of the indirect costs incurred by the governing authority for a common or joint purpose benefiting the law enforcement agency and other local government agencies which are not readily assignable to any particular agency.</li></ul> <p>I followed up our conversation with an email (attached) and asked the following. "My division is allowed to pay for training for Revenue employees outside of my division that are assisting in our law enforcement mission. Specifically, training like Association of Certified Fraud Examiner Certification (ACFE), Association of Certified Money Laundering Specialist (ACAMS) and some advanced leadership training for help with our training and hiring functions. We can also</p> <p style="text-align: right;"><small>blangle\DOFAAdmin\Training\7/29/2019 10:40 AM</small></p> <hr/> <p><i>purchase equipment like computers used for our case management system and other systems used by our IT department."</i></p> <p>Gary Responded with "I would say that this would be an acceptable expenditure of the funds. As always, this is just my own personal opinion based on what you have told me."</p> <p>Based on the fact that ACAMS, ACFE, Turknett and computer equipment will enhance our ability to investigate crimes, prosecute cases and better train, hire and retain our law enforcement agents and myself I am requesting we use OSI State Forfeiture Funds to pay for the above.</p>			

**Figure 7:** Email from ED Skandalakis to Director Waites on September 24, 2019





**Figure 8:** Email from Director Waites to DOR leadership on September 24, 2019





O.C.G.A. § 9-16-19 (a) (5). Contract labor may be an appropriate use for such funds under this paragraph.

pete

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**Peter J. Skandalakis**

Executive Director

Prosecuting Attorneys' Council

1590 Adamson Parkway, 4<sup>th</sup> Floor

Morrow, GA 30260

Office: 770.282.6300

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**From:** Waites, Joshua [Joshua.Waites@dor.ga.gov](mailto:Joshua.Waites@dor.ga.gov)>

**Sent:** Monday, September 23, 2019 10:49 AM

**To:** Pete Skandalakis [pskandalakis@pacga.org](mailto:pskandalakis@pacga.org)>

**Subject:** SAAG

Director Skandalakis,

Per our conversation do you believe that it is an acceptable use of our forfeiture funds to pay for a Special Assistant Attorney General (SAAG) via contract to help prepare and prosecute criminal cases for our office.

Thank you!

Josh K. Waites, CFE, IACECP

Director, Office of Special Investigations

Ga Department of Revenue

1800 Century Blvd NE Suite 1175 Atlanta, Ga 30345

P: 404.417.2204 | F: 404.417.2181 | C: 678.794.6184

***Allegation 2: OSI personnel abused the Financial Crimes Enforcement Network (FinCEN) by submitting a false certification.***

On February 21, 2017, OSI Special Agent (SA) Scott Santillie submitted an investigative request to the United States Department of Treasury, Financial Crimes Enforcement Network (“FinCEN”), commonly known as a “314(a) request” due to its origin in Section 314(a) of the USA PATRIOT Act of 2001. *See* Pub. L. No. 107-56. FinCEN 314(a) requests allow law enforcement officials to identify and confirm bank accounts held by an individual or entity under investigation. However, such requests can only be made concerning targets “engaged in, or [...] reasonably suspected based on credible evidence of engaging in, terrorist activity or money laundering.” 31 C.F.R. § 1010.520. SA Santillie’s February 2017 submission, which was approved by OSI Assistant Chief Jeff Mitchell, sought information concerning bank accounts held by Todd and Julie Chrisley and other business entities associated with the Chrisleys.

While DOR did not maintain an internal policy addressing 314(a) requests, specific requirements are outlined on the standard State and Local Certification Form provided by FinCEN for submissions. According to the form, a requester must certify that they have satisfied the necessary requirements. Specifically, the form requires a certification that:

*I understand that Section 314(a) System [sic] is an extraordinary law enforcement tool that should not be used if there are adequate traditional investigative tools available.*

In addition, the requester must certify whether the investigation involves “credible evidence” of terrorist activity or “significant money laundering activities.” As a result, a 314(a) request is only proper if an ongoing criminal investigation existed before the time of submission.

OIG found that OSI personnel did not have sufficient cause to make a 314(a) request. Before the submission of the 314(a) request, senior DOR leadership explicitly instructed DOR OSI that a criminal investigation concerning the Chrisleys should not be opened, and that the matter would remain civil in nature. Despite SA Santillie’s certification that “[t]he investigation is a priority to the Agency,” OIG did not find any evidence that OSI had conducted any criminal investigative steps prior to submission. In fact, email correspondence suggests that OSI opened a criminal file and assigned a case number solely for the purpose of submitting a 314(a) request less than 24 hours later. After submitting the 314(a) request, OSI did not take any other investigative actions for the following nine months, at which point the criminal file was closed.

Evidence gathered during this investigation suggests that Director Waites initiated the 314(a) request. During OIG interviews, former revenue agent Katie Vancil and former Supervisory Special Agent (SSA) Douglas Legg both separately identified Director Waites as the individual who first suggested and directed the use of the 314(a) request. Vancil reaffirmed this statement on April 14, 2021, while testifying during a federal evidentiary hearing. In addition, SSA Legg wrote a sworn affidavit on March 11, 2020, stating that “DOR employees submitted a certification to FinCEN at the direction of Joshua Waites falsely alleging the Chrisleys were involved in terrorism or money laundering in order to obtain the Chrisley’s financial information.” During his interview with OIG, SA Santillie could not recall any conversations with Director Waites concerning the 314(a) request and identified SSA Legg as the individual who requested the submission; however, OIG confirmed that SSA Legg was not present at DOR on the day the 314(a) request was submitted. In addition, SSA Legg later sent an email to Assistant Chief Mitchell on March 15, 2017, indicating a lack knowledge concerning the submission (“Hey Jeff, Did Scott open a criminal case on Todd Chrisley? I have no information on this but saw it in Case Closed, are we now working a criminal case with all else were presently doing?”).

Finally, in email correspondence from 2020 reviewed by OIG, and during subsequent interviews, SA Santillie and Assistant Chief Jeff Mitchell claimed that documentation related to the 314(a) request was destroyed according to common practice and no longer existed. Despite these assertions, OIG eventually located the request in email accounts for three separate DOR employees, including one belonging to SA Santillie.

Based on these findings, the allegation is substantiated.

***Allegation 3: Director Waites violated state procurement rules by purchasing a 2015 Ford F250 Super Duty truck.***

While reviewing DOR OSI's most significant state civil asset forfeiture expenditures, OIG noted multiple vehicle purchases from CarMax (Southlake), a used car dealership. These expenditures included an April 2018 purchase of a 2015 Ford F250 Super Duty truck for \$46,036.00. This vehicle was assigned to Director Waites for his use in conducting state business. In total, DOR OSI spent \$168,721 at CarMax (Southlake) between October 2014 and April 2018 for the purchase of five vehicles.

Several statewide policies outline the appropriate use of state vehicles from initial procurement through disposal, including the Department of Administrative Services (DOAS) Procurement Manual and the DOAS and Office of Planning and Budget's (OPB) jointly issued Policy 10, *Rules, Regulations and Procedures Governing the Use and Assignment of Motor Vehicles, Purchase, Operation and Disposal of Motor Vehicles and Associated Record-keeping* ("Policy 10").<sup>2</sup> At issue here, Policy 10 includes three requirements when purchasing vehicles larger than a mid-sized automobile:

- Section 5.2.2 *Motor Vehicles Authorized for Acquisition*: "Agencies must obtain authorization from OFM to acquire any automobile larger than a mid-sized automobile or an automobile with options not included in the equipment shown on the state contract specification."
- Section 5.3 *Ordering Motor Vehicles*: "All motor vehicles must be ordered through DOAS statewide contracts. Prior to ordering any vehicles, agencies must submit the associated procurement documentation to OFM through the Vehicle Request Form for certification that the size and optional equipment restrictions of this policy memorandum are being complied with. No motor vehicle may be ordered without the authorization of the appropriate DOAS official."

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<sup>2</sup> Available at

<https://doas.ga.gov/assets/Fleet%20Management/Fleet%20Management%20Rules%20Policies%20and%20Compliance/Policy%2010%20Version%2010%20Updated%2010-1-2020.pdf> (last visited Sep. 9, 2021).

- Section 5.4 *Purchasing Used or Demo Motor Vehicles*: “Unless granted specific authority by OFM, all automobiles purchased by agencies must be new; however, agencies may request authorization to purchase used automobiles. In such instances, agencies must demonstrate that the cost of each used motor vehicle purchased does not exceed the fair market value of the vehicle as determined by the National Auto Research’s “Black Book.”

When contacted by OIG, DOAS’s Office of Fleet Management (OFM) and State Purchasing Division (SPD) were eventually able to locate waivers submitted by DOR for the 2015 Ford F250 Super Duty truck and the other vehicles purchased from CarMax, however, DOAS did not approve these waivers. In addition, DOAS SPD confirmed that CarMax was not a statewide contract holder at the time the vehicle was purchased and had never been a statewide contract holder. DOR OSI’s purchase of used vehicles without an approved waiver is also a violation of Policy 10.

In addition to the repeated violations of the statewide procurement policy and improper use of state asset forfeiture funds, OIG believes this vehicle’s purchase and use is appropriately categorized as wasteful. “Waste” is defined by OIG as a reckless or grossly negligent act that causes state funds to be spent in a manner that was not authorized or represents significant inefficiency and needless expense. OIG determined that Director Waites resided approximately 60 miles away from his office at DOR headquarters. The 2015 Ford F250 Super Duty truck’s fuel consumption for the time period between May 2018 and March 2020 resulted in over \$13,000 of state expenditures. OIG recognizes that certain law enforcement personnel require assigned vehicles to effectively perform their duties, and that these duties may include hauling equipment or other activities necessitating a heavy-duty truck, but Director Waites had no justifiable reason for the regular use of such a vehicle. The use of a heavy-duty diesel powered 2015 Ford F250 Super Duty truck for his daily commute was a significantly inefficient and needless expense.

Based on these findings, OIG substantiated the allegation.

***Allegation 4: OSI improperly issued agency vehicles for personal use by civilian employees.***

During this investigation, DOR provided information concerning two OSI employees who used agency vehicles in violation of DOAS and OPB's jointly issued Policy 10. Policy 10 outlines minimum requirements for the use of assigned and agency pool vehicles by state employees. Specifically, Section 3, *Authorization for Vehicles to be Assigned*, requires that state employees meet one of the following conditions to be eligible for assignment of a vehicle including overnight use:

- A state employee whose position requires him or her to perform the duties of a sworn POST-certified/registered law enforcement officer, and the motor vehicle assigned to the state employee is specially equipped for law enforcement purposes and having the motor vehicle is essential for the state employee to carry out their job functions.
- A state employee travels to different work sites as part of routine duties.
- The vehicle has special equipment other than a radio or cellular telephone, is used to transport equipment which is too large or heavy, or has special features which make it impractical to be transferred between motor vehicles or between a motor vehicle and a fixed location;
- A motor vehicle is for emergency use or is specially equipped and used for a related mission - such as a law enforcement vehicle or an environmental protection hazardous materials cleanup vehicle - and the vehicle is rarely driven to a conventional worksite from state employee's home; or
- The vehicle is required to be driven in sites or under conditions that would endanger a privately-owned vehicle.

In connection with the overnight use of pooled vehicles, Section 3.3, *Agency Pool Vehicle Assignments*, states that state employees who do not meet the requirements for an assigned vehicle may temporarily utilize a state motor vehicle for state business and take the vehicle home after work hours if the employee meets one of the following criteria:

- The state employee must travel directly to a remote site (of sufficient distance for the state employee to be on travel status) from his or her home the following morning.

- The state employee's productivity will be decreased by having to allot time to drop a vehicle off at his or her conventional worksite at the end of a workday during which the state employee has used the vehicle in an authorized manner; or
- On a temporary basis, the state employee is required to respond to emergencies that take place after normal business hours (e.g. temporary on-call status).

In both cases, none of the above requirements were met when Director Waites suggested and approved the use of these vehicles. Director Waites purportedly instructed one employee to use the vehicle simply to increase the use and mileage of the vehicle to validate its continued use.<sup>3</sup> As for the other employee, Director Waites offered the use of an agency vehicle after the employee's personal vehicle broke down. This employee continued to commute to and from work using the agency vehicle for approximately six months without meeting the above requirements. DOR acknowledged both violations, self-reported the issue to OIG, and acted by dismissing one of the employees.

Based on these findings, OIG substantiated the allegation.

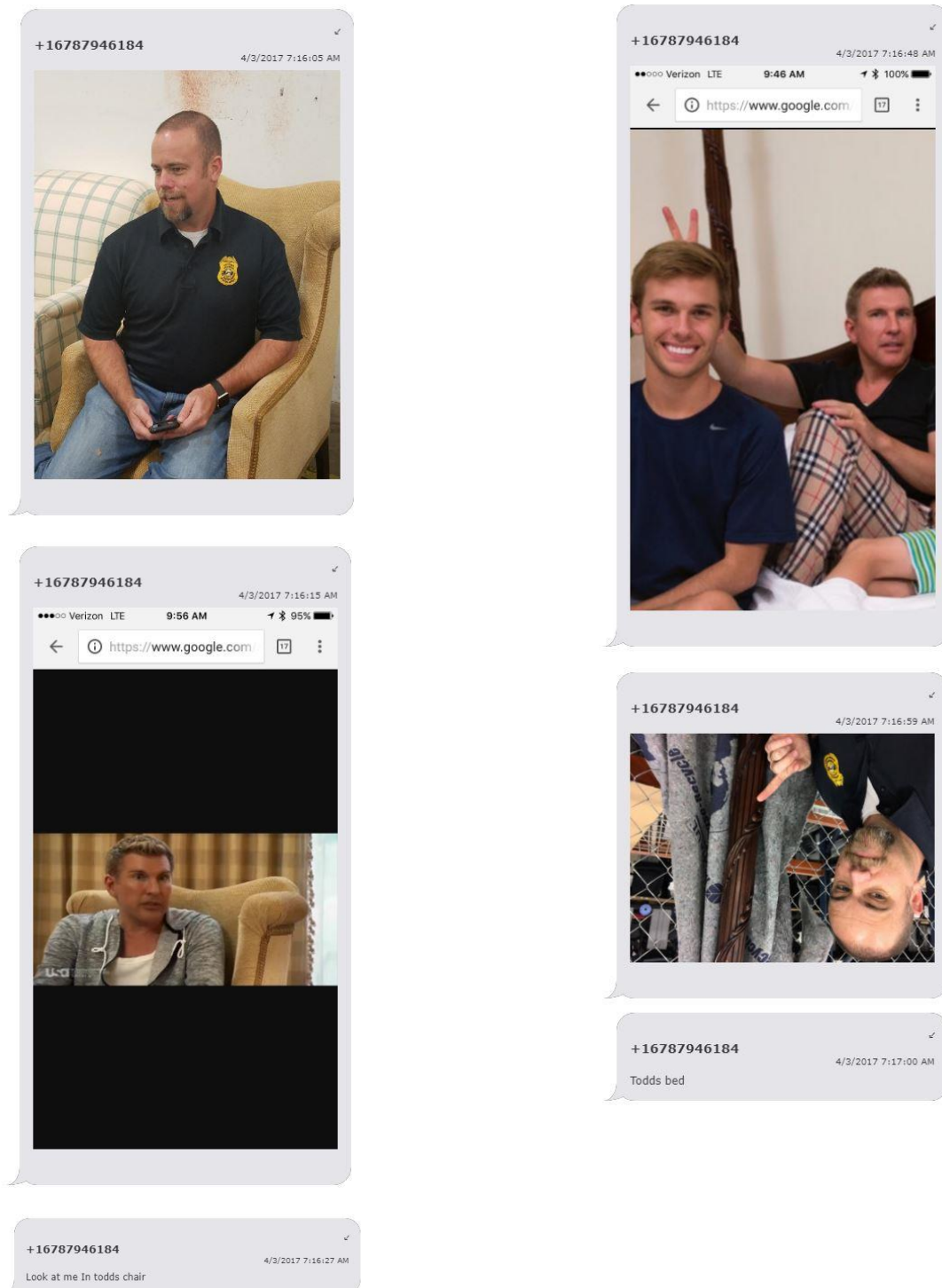
***Allegation 5: Director Waites and other senior DOR personnel posed for photographs on furniture seized from Todd Chrisley.***

OIG was informed that senior OSI personnel posed for photographs on furniture seized from Todd Chrisley that had previously been featured on "Chrisley Knows Best," a reality television program. OIG recovered texts and images from a phone belonging to a former DOR CFO that depicts Director Waites posing on both a bed frame and sofa featured in the show (**Figure 9**).

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<sup>3</sup> Prior versions of the Department of Administrative Services (DOAS) Fleet Manual included a requirement that vehicles assigned to state employees be driven at least 14,000 state business miles per year (Section 4.4). Policy 10 also includes a requirement that for each new motor vehicles requested, the vehicle be used a minimum of 25% of the median miles driven by asset type, per state entity as determined by the Office of Fleet Management (Section 5.1.1).

**Figure 9:** Text messages sent by Director Waites on or about April 3, 2017





When interviewed, other witnesses claimed to have observed a dartboard and/or punching bag with a picture of Todd Chrisley affixed to the surface located in OSI headquarters. OIG was unable to locate any photographs or physical evidence that confirmed whether these items existed. In addition, OIG did not obtain photographs of other OSI personnel posing on Chrisley furniture. However, OIG obtained witness statements from two credible sources within DOR that claimed to have observed a photograph being taken, or later observed an actual photograph, of Deputy Revenue Commissioner Scott Graham and Chief Tax Officer (CTO) Staci Guest sitting on the Chrisley furniture. When interviewed about the potential existence of such a photograph, CTO Guest stated that she “did not recall” anyone taking a picture of her, but that she did sit on the Chrisley furniture because “[t]here was nowhere else to sit.”

DOR’s Policies and Procedures Manual, HR 501, states that “Employees are expected always to interact in a professional manner.” Specific examples of prohibited behavior include “creating, [...] or distributing electronic or printed material that could reasonably be considered [...] harassing, or intimidating” and “Other behavior that reflects discredit on the department or is unreasonably disruptive to effective and efficient DOR operations.”

By posing on the Chrisley’s furniture, Director Waites and other senior DOR leadership undermined DOR’s ability to maintain a position of impartiality in the enforcement of state laws. Further, acting in this manner harmed DOR’s professional reputation and lends credence to Todd Chrisley’s complaints that he was unfairly targeted for investigation due to his “celebrity status.”

Based on these findings, OIG substantiated the allegation.

***Allegation 6: A conflict of interest existed when Pippin’s BBQ, a restaurant owned by DOR Commissioner David Curry, catered the 2019 DOR OSI Christmas Party.***

OIG received multiple complaints from former and current DOR employees regarding OSI’s December 17, 2019, luncheon. OIG determined that in November 2019, a party planning group within OSI obtained a price quote from a barbeque restaurant located near DOR’s main office. The restaurant offered to provide 40 individual meals for a total of \$450.50. Director Waites subsequently approached Commissioner Curry to ask whether Pippin’s BBQ would cater the gathering instead. At the time, DOR Commissioner David Curry owned Pippin’s BBQ. Commissioner Curry agreed to host the luncheon and referred Director Waites to the restaurant manager to coordinate the specific details. The luncheon was not paid for with state funds or asset

forfeiture funds, but instead money was collected from each OSI employee individually. Although the luncheon was ostensibly a voluntary social gathering, some OSI personnel reported to OIG that they felt cultural pressure from within the agency to attend and pay for the event knowing that the restaurant was owned by Commissioner Curry. Pippin's BBQ did not retain any documentation indicating the final charged amount. While OIG confirmed that Commissioner Curry was aware his company provided food for the party, it does not appear that Commissioner Curry ever initially solicited the business for his restaurant.

Effective at the time of the luncheon, Executive Order 01.14.19.03 established a Code of Ethics applicable to executive branch officers and employees.<sup>4</sup> The Code of Ethics does not explicitly define what constitutes a "conflict of interest," but does explain that "[a]n appearance of conflict exists when a reasonable person would conclude from the circumstance that the employee's ability to protect the public interest, or perform public duties, is compromised by personal interests." *See also, Black's Law Dictionary* 363 (10th ed. 2014) (defining "conflict of interest" as "a real or seeming incompatibility between one's private interests and one's public or fiduciary duties."); *Conflict of Interest, The Wolters Kluwer Bouvier Law Dictionary Desk Edition* (2012) ("Any division of loyalties owed to different entities by the same person or firm.").

As the primary owner, Commissioner Curry had a financial interest in Pippin's BBQ. It benefited the Commissioner, even if only in some small measure, whenever the restaurant successfully conducted business. At the same time, as the head of DOR, Commissioner Curry had a fiduciary duty of loyalty to act in the agency's best interests. *See, e.g., Ga. Const. of 1983, Art. I, Sec. II, Par. I* ("Public officers are the trustees and servants of the people and are at all times amenable to them"). The agency's interest would include obtaining a comparable amount of food for the lowest price. By agreeing to offer his restaurant as a paid caterer, the Commissioner's dual interests were unavoidably in conflict. *See, e.g., Bouvier* ("A conflict of interest arises when one person, firm, or other entity owes a duty of loyalty to two different entities whose interests may require different decisions or actions.").

In addition, this arrangement raises other concerns. By simply offering to replace the original restaurant, no guarantee existed that Pippin's BBQ would provide DOR comparable

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<sup>4</sup> This conduct also implicates DOR's Policies and Procedures Manual, HR 501, prohibiting financial relationships that would impact an employee's impartiality and any actual or perceived conflicts of interest.

services. And had Pippin's BBQ not been aware of the competitor's price, Pippin's BBQ may have offered a lower rate if asked for a price quote. *See* O.C.G.A. § 45-10-1 (listing the "Code of Ethics for Government Service" for all state officers, including that such persons should never use any information coming to him confidentially as a means for making a private profit). As a final observation, because Pippin's BBQ was not located near DOR headquarters and had previously never been used as a caterer for DOR, it is likely that the opportunity to cater this luncheon arose solely due to Commissioner Curry's position.

Based on these findings, OIG substantiated the allegation.<sup>5</sup>

***Allegation 7: DOR failed to implement proper internal controls governing the management of a bank account created for use in "undercover" criminal investigations.***

DOR reported to OIG concerns regarding the existence of an "undercover" bank account opened by Director Waites for use in criminal investigations. The account was opened in a fictitious name and with the knowledge and approval of DOR finance and accounting personnel. The account had not been monitored by DOR leadership once opened on June 9, 2017, and DOR expressed concerns regarding the potential for unvetted and unsupervised transactions. OIG confirmed the account existed and that the only transactions that occurred on the account between June 2017 and March 2020 involved an initial transfer of funds. At OIG's recommendation, the account was closed, and the recovered funds were remitted to Office of the State Treasurer as the account was funded with state civil asset forfeiture funds. While OIG did not determine that any misconduct occurred, there did exist a lack of any accounting and oversight.

Based on these findings, OIG substantiated the allegation.

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<sup>5</sup> Because the event was purchased using individual employee collections and was not an official agency transaction, OIG did not find O.C.G.A. 45-10-20 *et seq.*, which outlines whether public officers and employees may engage in business transactions with state entities, applicable.

***Allegation 8: DOR failed to implement proper internal controls governing the management of mobile devices.***

OIG discovered that devices owned and issued by DOR to Director Waites did not have the agency's mobile device management software installed. Further, inventory tracking records for issued devices associated with Director Waites were incomplete and unavailable for review. O.C.G.A. § 50-16-160, Georgia Technology Authority policy PS-08-002, and IRS Publication 1075 outline the requirements to maintain inventory tracking on mobile and electronic devices. Specifically, mobile device management software must be installed on mobile devices with access to Federal Tax Information.

While managing a fleet of mobile devices for agencies the size of DOR is challenging, existing DOR practice and procedures were disregarded without justification. DOR is tasked with handling sensitive taxpayer information and the failure to uniformly apply sound device management practices could result in significant consequences for the Department.

Based on these findings, OIG substantiated the allegation.

***Allegation 9: (Unsubstantiated) DOR personnel engaged in undisclosed personal relationships.***

OIG received multiple reports from DOR employees of potential romantic relationships between managers and supervisors and their subordinate employees. DOR's Policies and Procedures Manual, HR 501, prohibits undisclosed dating, romantic, or sexual relationships between managers or supervisors and their subordinate employees. While the reports were consistent, and involved the same specific individuals in the department, OIG was unable to locate any DOR employees with direct knowledge of the relationships or who had personally witnessed any illicit conduct. Most DOR employees who were interviewed by OIG identified their knowledge of such relationships as rumor. As such, OIG was unable to substantiate the allegations. OIG reserves the right to reevaluate the allegations should substantive new information come to light.

***Allegation 10: (Unsubstantiated) DOR OSI improperly utilized state asset forfeiture funds to pay an OSI employee for landscaping services.***

With some exceptions, O.C.G.A. § 45-10-20 prohibits full-time employees from transacting any business with their own state agency. OIG confirmed that DOR made a payment on or about November 21, 2014, to Brian Crisp, a current Special Agent (SA) with DOR OSI, for landscaping services. However, at the time of the payment and service, SA Crisp was not employed by the state. Because SA Crisp was not employed at the time of transaction, the Code of Ethics and the statutory prohibition on transactions between employees and state agencies did not apply.

Based on these findings, the allegation was unsubstantiated.

***Allegation 11: (Unsubstantiated) DOR OSI improperly paid Fair Labor Standards Act overtime to employees.***

OIG was informed that DOR made regular overtime payments to OSI Special Agents. Overtime payments are regulated by DOAS and OPB's jointly issued statewide Policy 7, *Rules, Regulations, and Procedures Governing Working Hours, the Payment of Overtime, and the Granting of Compensatory Time*.<sup>6</sup> Overtime payments are permitted by Policy 7; however, such payments are subject to approval from OPB. In addition, agencies are instructed to "minimize the occurrence of overtime work to the extent practicable." In reviewing the matter, OIG confirmed overtime payments for OSI employees were funded through federal asset forfeiture funds and related to the OSI employees' work while assigned to a federal task force. The United States Department of Justice (DOJ) and the United States Department of the Treasury jointly issued *Guide to equitable sharing for state, local, and tribal law enforcement agencies* outlines how funds obtained through federal asset forfeiture funds may be spent. After reviewing these materials, DOR OSI's use of federal asset forfeiture funds appears to be appropriate under the DOJ guidelines.

Based on these findings, the allegation was unsubstantiated.

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<sup>6</sup> Available at <https://opb.georgia.gov/document/document/policy-7/download> (last visited Sep. 9, 2021).

## **V. RECOMMENDATIONS**

As a result of this investigation, OIG offers the following recommendations for consideration.

**1. DOR should cultivate an ethical culture within the agency using a “tone at the top” approach.**

In keeping with prior recommendations, OIG encourages DOR and its leadership to promote ethical behavior amongst its employees through example. In doing so, DOR should continue to enhance the visibility of independent mechanisms for employees to report suspected policy violations and fraud. OIG identified numerous instances where employees voiced concerns about reporting potential misconduct for fear of retaliation. In addition, OIG found Director Waites intentionally deceived DOR leadership by withholding relevant details regarding the statutory requirements for state civil asset forfeiture funds.

**2. DOR should perform an audit of all purchases made using state civil asset forfeiture funds.**

OIG confirmed DOR was not entitled to expend funds obtained through the state civil asset forfeiture process. As a result, these funds expended by DOR were unlawful. Without conducting a full review, OIG identified purchases which were clearly wasteful, gave the appearance of extravagance, and would not likely be considered “proper prosecutorial purposes.” OIG recommends an audit be performed to determine the full extent of this misuse. Such an audit could identify other regular practices and procedures that resulted in policy or procurement violations and that require immediate remediation.

**3. DOR should seek to educate staff on the Bank Secrecy Act and its related provisions, including the appropriate use of FinCEN databases for criminal investigation.**

OIG recommends DOR train their law enforcement officers on the appropriate use of the FinCEN database and develop clear and documented guidelines for its use. In addition, DOR should maintain all submitted FinCEN requests and related paperwork for a reasonable time period. During the investigation, DOR OSI personnel indicated that their practice included deleting or destroying the original document and any copies of the submitted FinCEN request. OIG does not believe this is a standard or appropriate practice. FinCEN records are

protected from disclosure to the general public under federal law, are treated as a confidential source, and are not required to be destroyed. The premature destruction of records conveys the impression of malfeasance.

**4. DOR should seek an official opinion from the Office of the Attorney General to determine the extent of OSI's law enforcement authority.**

Special agents and enforcement officers appointed by the DOR commissioner are not granted general police powers by law. Instead, their jurisdiction is limited and specific. This jurisdiction includes enforcement of regulations related to alcoholic beverages (O.C.G.A. § 3-2-30), registration and licensing of motor vehicles (O.C.G.A. § 40-2-134), motor fuel and road taxes (O.C.G.A. §§ 48-9-12, 48-9-44), and tobacco and vaping products (O.C.G.A. § 48-11-19). Seeking to obtain broader authority, Director Waites arranged for the sheriffs of Gwinnett and Butts County to administer an oath of deputy sheriff to each OSI agent. Director Waites believed this “swearing in” would grant OSI agents statewide jurisdiction over any and all criminal violations. OIG understands that county sheriffs commonly administer similar oaths as a courtesy to other local law enforcement agencies, such as municipal police departments, so that these agencies can gain broader jurisdictional authority. However, unlike DOR special agents and enforcement officers, these local agencies are typically not constrained by law to a specific set of criminal violations and regulations. OIG was unable to determine whether DOR OSI's procedure to obtain expanded police powers was appropriate and lawful and recommends that DOR obtain a formal opinion to clarify the matter.

**5. DOR should establish a clear separation of duties between its criminal and civil divisions.**

As a result of unlawful coordination between the DOR compliance division (civil) and OSI (criminal), evidence obtained via civil process was deemed during a federal criminal prosecution as having been gathered in violation of the Fourth Amendment. *See United States v. Chrisley*, No. 1:19-cr-00297-ELR-JSA (N.D. Ga. Sep. 9, 2021). In addition to the reputational damage caused to the Department, valid questions remain regarding whether civil tax procedures are used to circumvent Fourth Amendment rights. OIG recommends DOR establish a clear and documented procedure for the referral of civil tax matters to criminal investigative units within the Department.

## **VI. CONCLUSION**

OIG thanks the current leadership of DOR for their assistance with this matter, which included responsive access to internal documents and witnesses. The Department has made it clear that it wishes to turn the page on this unpleasant chapter of DOR's history, and the support of OIG's inquiry demonstrates DOR's renewed commitment to an ethical and transparent administration. OIG encourages DOR to continue fostering an environment that supports the reporting and elimination of fraud, waste, abuse, and ethical violations within our state government.