

Annual Report

Office of Inspector General

Fiscal Year 2010

November 2010



Office of Inspector General
Montgomery County, Maryland

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A Message from the Inspector General

November 2010

Our FY 2010 results include identifying more than \$1 million in questioned vendor and employee costs related to the Montgomery County Government (MCG) Tuition Assistance Program and a decision by County leaders not to renew for FY 2011 at least \$350,000 in grants/contracts to a Department of Health and Human Services vendor investigated in FY 2009 by the Office of Inspector General (OIG). In FY 2010 and early FY 2011, we initiated reviews of County projects with more than \$4.5 million in potential questioned costs. The OIG plans to report the results of these reviews in the third quarter of FY 2011.

Appendix A of this report presents a five-year (FY 2006-2010) summary of OIG performance results that positively impacted Council and Executive decisions involving more than \$37 million in public funds. OIG expenditures during the same five-year period were approximately \$2.8 million.

Appendix B of this report provides a summary of four OIG projects with recommendations to promote the use of best practices across Montgomery County organizations to increase fiscal, legal, and ethical accountability and to strengthen the County's governance system.

The OIG's capabilities to carry out its mission were strengthened in FY 2010 by County Council actions that: 1) authorized the Inspector General to employ or retain an independent attorney; and 2) increased protection for whistleblowers. However, we also experienced actions by certain County officials that interfered with or restricted the OIG's independence and ability to safeguard the identity of confidential sources and protect privileged and confidential information, including electronically stored information. These actions surfaced during an OIG self-assessment of operations that was designed to provide reasonable assurances that the OIG was operating effectively and in accordance with the County's Inspector General law and applicable *Principles and Standards for Offices of Inspector General* issued by the Association of Inspectors General. Beginning in March and continuing through November 2010, we unsuccessfully sought the cooperation of the Chair of the Council's Audit Committee, the Executive's Chief Information Officer, and the Acting County Attorney in order to find solutions to the independence and confidentiality concerns identified. We believe that a third-party review conducted on behalf of the newly-elected Council may be necessary to determine if conflicts of interest, violations of the attorney-client privilege, or other impairments causing the independence and confidentiality concerns can be removed from the current operating environment. As some Charter Review Commission members recently proposed, County leaders may want to consider whether the public interest could be best served by an Inspector General that is placed outside both the executive and legislative branches of government.

Last August, I notified the Council that after serving as the Inspector General since April 2005, I planned to retire from Montgomery County incident to a newly-elected Council taking office and having the opportunity to appoint the County's third Inspector General.

I would like to take this opportunity to thank the many employees, contractors and residents who have been strong supporters of the inspector general concept over the past five years.

Respectfully submitted,

Thomas J. Dagley

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Statutory Responsibilities

The OIG was established by the Montgomery County Council in 1997. The OIG is an independent office that relies on Government Auditing Standards¹, the Principles and Standards of the Association of Inspectors General², and other professional standards to address the following responsibilities prescribed by Montgomery County Code §2-151:

1. Review the effectiveness and efficiency of programs and operations of County Government and independent County agencies³;
2. Prevent and detect fraud, waste, and abuse in government activities; and,
3. Propose ways to increase the legal, fiscal, and ethical accountability of County Government and Council-funded agencies.

To fulfill our responsibilities, we:

- Maintain an independent objective organization to conduct audits, reviews, and investigations;
- Take appropriate action to prevent and detect fraud, waste, and abuse;
- Receive and investigate credible complaints;
- Report possible criminal violations of law to: the State's Attorney for Montgomery County; Maryland State Prosecutor; Maryland Attorney General; U. S. Attorney; or any other appropriate law enforcement agency⁴;
- Notify the Council of serious concerns in Council-funded programs;
- Review existing/proposed legislation and regulations to strengthen controls and increase accountability and;
- Submit reports with recommendations, as appropriate, to County leaders.

Fiscal Year 2010 Highlights

The OIG issued three formal reports in FY 2010 as part of its work to increase efficiency and effectiveness; prevent and detect fraud, waste and abuse; and propose ways to increase fiscal, legal and ethical accountability of County government and other Council-funded agencies. The reports are:

- Interim Report – Review of Fire & Rescue Service Vehicle Accident (and related Executive Branch investigations), October 16, 2009
- Final Report – MCG Tuition Assistance Program, March 2010
- Final Report – MCG Payments to Montgomery County Volunteer Fire and Rescue Association, April 2010

¹Government Auditing Standards, U. S. Government Accountability Office (July 2007 Revision).

²Principles and Standards for Offices of Inspectors General, Association of Inspectors General (May 2004 Revision).

³In addition to the Executive Branch, the Council-funded agencies include: Montgomery County Public Schools (MCPS); Maryland-National Capital Park and Planning Commission (MNCPPC); Washington Suburban Sanitary Commission (WSSC); Montgomery College; Housing Opportunities Commission; Revenue Authority; and any other governmental agency (except a municipal government or a State-created taxing district) for which the County Council appropriates or approves funding, sets tax rates, or approves programs or budgets.

⁴For example, federal offices of inspector general.

The three FY 2010 reports and management's responses to the findings and recommendations are posted under "IG Activity" on the OIG website at <http://www.montgomerycountymd.gov/ig>.

In FY 2010, we also followed up on our September 2008 report that addressed MCG's Disability Retirement Program. We issued a memorandum to the Chief Administrative Officer (CAO) on June 7, 2010 requesting an update to management's plan to make changes to the administration of the Disability Retirement Program and to address disability retirement law reforms enacted by the County Council that went into effect August 19, 2009. Our June 7, 2010 memorandum and the CAO's July 26, 2010 response can be found on the OIG website. It is important to note that the Executive Branch's corrective action includes analyzing disability retirement as a longer-term MCG CountyStat project. This initiative provides interested parties with an opportunity to track the impact of management changes to the administration and cost of disability retirement.

Another FY 2010 project relates to the OIG's legal basis to access all official records needed to carry out its mission. A current court case that has been appealed to the Maryland Court of Special Appeals involves clarifying the OIG's authority to access investigative records compiled by the County's Department of Police that are needed to complete an OIG review of the Executive Branch's handling of a November 2008 vehicle accident investigation involving a senior-level member of the County's Fire & Rescue Service. Details can be found under "IG Activity" on the OIG's website.

Fraud Hotline

Sixty-nine reports were received in FY 2010 with approximately 65 percent reported anonymously. Thirteen categories of reports were used to help analyze the nature of information reported to the OIG. Policy issues, fraud, theft of time, and theft of goods/services represented the four largest categories. While the total number of fraud, waste, and abuse reports received annually by the OIG has remained relatively consistent, the quality of information received continues to improve. In FY 2010, information from several fraud hotline reports became OIG priorities and significantly contributed to our performance results.

Joint Investigations with Prosecutors

In FY 2010, we continued to pursue potential fraud or other illegal activity involving County programs or activities by conducting joint investigations with law enforcement agencies or prosecutors. Three joint investigations were initiated during the reporting period. For this type of work, the decision to formally pursue violations of criminal statutes is made by the law enforcement agency, with OIG responsibilities focusing on providing preliminary evidence and investigative support, when requested. If deficiencies in County internal controls are found to be a contributing factor, the OIG is committed to reporting the conditions and recommendations to senior management for corrective action.

Administrative Issues

OIG Budget and Resources

FY 2010 was the OIG's thirteenth year of operation as an oversight office for Council-funded organizations. Notwithstanding the quantifiable results that are summarized in Appendix A of this annual report, it seems clear that Montgomery County's deployment of the inspector general concept remains in the early stages. With FY 2010 OIG expenditures of approximately \$612,226 and an authorized staff of four full-time employees, the OIG's budget should be re-evaluated by the Audit Committee of the newly elected Council to properly address the inherent risks associated with hundreds of County programs and activities that generate an annual operating budget exceeding \$4 billion and a six-year capital improvements program budget in excess of \$3.9 billion. In recent years, many OIG stakeholders have questioned what they believe is a significantly understaffed OIG, given the size and complexity of Montgomery County's programs and activities.

Audit and Investigative Standards/Professional Development

As an independent office, we ensured that objectivity was maintained in all phases of our FY 2010 work, professional judgment was used to plan and perform our work and report the results, and our work was performed by employees and contractors who were professionally competent. We relied primarily on requirements set forth in the County's inspector general law and standards published by the Association of Inspectors General (AIG) to perform our work. We also relied on generally accepted government auditing standards, even though all projects reported in FY 2010 were officially designated as a review or an investigation. In FY 2010, OIG staff received continuing professional education and other training opportunities sponsored by a variety of organizations including the County government, AIG, Association of Government Accountants, and the Maryland Department of Public Safety and Correctional Services.

Professional Relationships

The Inspector General and OIG staff met periodically with: Council members; the County Executive; the Chief Administrative Officer; senior executive staff; the County Attorney; external auditors; managers from the Office of Legislative Oversight; officials from Montgomery County Public Schools; Maryland-National Capital Park and Planning Commission members; and Washington Suburban Sanitary Commission officials. In addition, we met periodically with state and federal auditors and prosecutors, and other inspectors general. During these meetings, standards applicable to the inspector general community were discussed along with other matters of mutual interest. As in prior years, FY 2010 discussions with key stakeholders helped ensure OIG reviews and investigations did not duplicate or conflict with other efforts.

**Office of Inspector General
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Fiscal Years 2006-2010 Performance Measures and Results**

Appendix A

Outcomes/Results	2006	2007	2008	2009	2010
Percentage of audit/review recommendations accepted ⁵	67	67	50	50	50
County funds recovered or value of recommendation ⁶ that funds be put to better use	\$17.3 million ⁹	\$3.1 million ¹⁰	\$500,000 ¹¹	\$3.7 million ¹²	\$350,000 ¹³
Questioned cost ⁷ or potential savings	\$182,000 ¹⁴	\$1.1 million ¹⁵	\$9.6 million ¹⁶	\$909,000 ¹⁷	\$1.1 million ¹⁸
Formal responses to fraud, waste, and abuse matters reported to management/Council by the Office of Inspector General	14	10	9	5	5
Workload/Outputs:					
Joint investigations with law enforcement/prosecutors	3	2	2	3	3
Complaints opened	53	54	48	62	11
Complaints closed	94	53	59	51	58
Audits/formal reviews reported ⁸	4	4	4 ¹⁹	4 ²⁰	3 ²¹
Inputs:					
Office of Inspector General Expenditures	\$438,625	\$534,614	\$587,329	\$617,737	\$612,226

See footnote explanations on the following page.

Appendix A (continued)**Footnote Explanations**

⁵ Includes recommendations or other actions carried out by the Council as a result of formal reports issued by the OIG.

⁶ The phrase “recommendation that funds be put to better use” means a recommendation that funds could be used more efficiently if management took actions to implement and complete the recommendation including: reductions in outlays; deobligation of funds; costs not incurred by implementing recommended improvements, avoidance of unnecessary expenditures noted in pre-award reviews of contracts or grant agreements, or any other savings which are specifically identified.

⁷ The term “questioned cost” means: a cost that is questioned because of an alleged violation of a provision of a law, regulation, contract, grant, or other agreement or document governing the expenditure funds; a cost that, at the time of the review, is not supported by adequate documentation; or a finding that the expenditure for the intended purpose is unnecessary or unreasonable.

⁸ Includes OIG reports issued in the 1st quarter of the following fiscal year where field work was completed prior to June 30.

⁹ In May 2006, as a result of a February 2006 OIG report, the Council reallocated \$14 million in capital improvements program (CIP) funds it originally approved in 2004 for a Seven Locks replacement elementary school on Kendale Road. This May 2006 decision included denying a Montgomery County Public Schools \$3.3 million request in additional funding for this CIP project.

¹⁰ In May 2007, the Council reduced the Executive’s recommended Fire & Rescue Service (FRS) overtime budget by \$3 million as a result of an April 2007 OIG report. Separately, in June 2007, we reported \$65,000 in improper County payments and court-ordered restitution following a joint investigation into a recovery agent scheme.

¹¹ In October 2007, following a bid protest and a joint OIG/State criminal investigation, a MNCPPC hearing officer reversed an estimated \$500,000 contract award to replace lights at County athletic ball fields at Olney Manor Park. Findings included the use of false financial data by the awardee.

¹² In April 2009, Executive Branch CountyStat officials reported a 21.6 percent (\$3.7 million) reduction in annual overtime dollars paid by FRS when compared to a year earlier. This reduction was the result of corrective action taken by management following OIG reports in April and December 2007 and April 2008. Although not included in OIG results, in a December 2009 presentation the Executive reported that in its first year of operation, CountyStat helped reduce overtime costs by \$16 million.

¹³ In May 2010, County leaders decided not to renew for FY 2011 grants or contracts totaling at least \$350,000 for a Department of Health and Human Services (DHHS) vendor who received \$909,000 in questionable FY 2007-2008 payments reported by the OIG in February and June 2009.

¹⁴ In a July 2006 report, the OIG identified potential savings of \$182,000 related to the lack of a formal return-to-work program for Montgomery County Public Schools employees receiving workers’ compensation payments.

¹⁵ In an April 2007 report, the OIG identified \$1.1 million in questioned FRS overtime compensation payments in Calendar Year 2006.

¹⁶ In an August 2007 report, the OIG identified more than \$9.5 million in questioned road construction costs associated with County government’s implementation of the Clarksburg Town Center Development District (CTCDD). In October 2010, the Council voted to terminate the CTCDD, reversing the County’s planned expenditure of approximately \$17 million for CTCDD infrastructure CIP projects. Separately, in a May 2008 report, the OIG identified improper payments totaling \$137,700 to a DHHS vendor.

¹⁷ See footnote 13.

¹⁸ In November 2009, as a follow-up to OIG reports in February and June 2009, the Director of DHHS identified \$84,000 in questionable FY 2009 payments to a vendor.

In a March 2010 report, the OIG identified \$638,000 in questioned payments to vendors associated with the MCG Tuition Assistance Program (TAP). With regard to the TAP report’s second finding, the Police Department determined that 7,822 hours were incorrectly recorded on timesheets and paid to 359 police officers. At a conservative estimate of \$35/hour, this equates to \$273,770. Separately, in an April 2010 report, the OIG identified \$115,206 in questioned funding to the Montgomery County Volunteer Fire and Rescue Association (MCVFRA).

¹⁹ This figure includes: MCG’s Disability Retirement Program, September 2008. In May 2009, in response to this OIG report, the Council amended the County’s disability retirement law. The financial impact of this OIG review has not been reported to date.

²⁰ This figure includes: OIG reports in December 2008 and January 2009 updating the Council and Executive on the OIG’s Disability Retirement Program review.

²¹ This figure includes: Fire & Rescue Service’s investigation of County vehicle accident, October 2009; MCG Tuition Assistance Program, March 2010; and MCVFRA Funding, April 2010.

**Office of Inspector General
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Selected OIG Projects and Recommendations to Promote Best Practices**

Appendix B

OIG Project	Recommendation
<p>Fraud Hotline – in December 2006, the Council’s OIG established an independent and confidential fraud hotline to help prevent and detect fraud, waste, and abuse in County government. Over the next four years, County employees, contractors, and others reported more than 200 allegations to the OIG. Many of the allegations reported were found credible and actionable, contributing to the performance results summarized in this annual report and current OIG projects.</p>	<p>The OIG’s hotline is limited to County government. It is neither an effective use of taxpayer resources nor a systematic approach to governance to have multiple Council-funded organizations operate separate hotlines that may not adequately safeguard the identity of whistleblowers. We recommend that, as the County’s governing body, the Council work with the Inspector General and leaders of all Council-funded organizations to expand the use of the OIG’s fraud hotline Countywide and require the use of quality standards for all investigations regarding allegations of improper or illegal conduct. (see OIG Project below regarding quality standards).</p>
<p>Capital Improvements Program (CIP) Projects, including School Construction – in May 2006, in response to a February 2006 OIG audit report that questioned the reliability of cost data and other information provided to the Council for an elementary school construction project, the Council reversed a plan to demolish the existing school. The Council denied a MCPS request for \$3.3 million in additional funding and reallocated the \$14 million approved in 2004 to build a replacement school at another site. Subsequent OIG analyses of CIP projects, including school construction, have identified higher-risk CIP project costs that are not subject to independent audit.</p>	<p>We recommend that the Council’s Audit Committee determine whether adequate independent audit work has been scheduled for higher-risk Council-approved CIP projects, including school construction. We recommend that, as part of its determination, the Council consider the potential financial benefits of requiring pre-award and post-award contract audits of higher-risk CIP projects for the purpose of identifying questioned, unsupported²², or disallowed²³ costs. Further, we recommend that the Council consider passing legislation requiring internal auditors to review and approve all costs for higher-risk categories of CIP projects, similar to audit requirements set forth in State Article 29 for WSSC system development charges (SDC) and related capital projects.</p>

See continuation of Appendix B on the following page.

²² The term “unsupported cost” means a cost that is questioned because, at the time, auditors found such cost is not supported by adequate documentation.

²³ The term “disallowed cost” means a questioned cost that management, in a management decision, has sustained or agreed should not be charged to the government.

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Selected OIG Projects and Recommendations to Promote Best Practices**

Appendix B (cont.)

OIG Project	Recommendation
<p>Quality Standards for Investigations – in an October 2009 report, the OIG identified deficiencies and discrepancies in an internal investigation conducted by the Executive Branch regarding allegations of misconduct by a senior-level Fire & Rescue Service employee. We reported that current County regulations do not require management or assigned investigators to comply with generally accepted quality standards for investigations regarding qualifications, independence, and due professional care (e.g., thoroughness, appropriate techniques, objectivity, ethics, timeliness, accurate and complete documentation). We recommended that the Chief Administrative Officer (CAO) take the necessary steps to ensure that quality standards for investigations are included as a requirement in the County’s Personnel Regulations and related County government policies. Although the CAO advised that our recommendation would be evaluated, no further action has been taken.</p>	<p>We recommend that the Council determine whether compliance with generally accepted quality standards for investigations involving allegations of employee misconduct should be required for managers and assigned investigators representing the Executive Branch, Council, Inspector General, Merit System Protection Board, Ethics Commission, and other County organizations.</p>
<p>Audit and Related Oversight – based on a September 2008 OIG report, the Council passed Resolution 16-826 in January 2009 that created a formal Council audit committee to strengthen the Council’s role in providing independent review and oversight for financial reporting, management controls, and audit activities for County government and other Council-funded organizations. The OIG’s recommendation to establish an audit committee was based on our independent assessment of County operations and best practices recommended by the Government Finance Officers Association (GFOA) and other nationally recognized professional organizations. The best practices included, but were not limited to, internal and external auditing and anti-fraud initiatives.</p>	<p>Although important steps were taken by the Audit Committee to address some key responsibilities, there are opportunities for the newly-elected Council, through its Audit Committee, to increase the County’s use of best practices recommended by the GFOA and others to ensure: senior management of all County organizations properly develops and adheres to a sound system of internal controls; procedures are in place to independently assess management practices; and the OIG and internal audit offices are properly staffed to objectively assess the potential for fraud and abuse. There is an opportunity for the Council to: 1) address some significant opposition to the independent examination of higher-risk taxpayer-funded expenditures; 2) clarify its expectations of all Council-funded organizations to encourage and facilitate the reporting of fraud and abuse by employees and contractors; and 3) ensure that those responsible for receiving and investigating complaints are well-qualified and document their work so it can be periodically examined.</p>

**Office of Inspector General Staff
(November 2010)**

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