

# Inspector General's Mid-Year Report of Activity

*for fiscal year 2019*

July – December 2018

Montgomery County Maryland  
Office of the Inspector General





### ***A Message from the Inspector General***

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Each year, the Office of the Inspector General (OIG) publishes formal reports that are publicly released and detail significant findings and recommendations. During the first half of fiscal year (FY) 2019, this office publicly issued two Preliminary Inquiry Memorandums, and two staff reports and participated in the oversight of two companion reports produced by subject matter experts. We also provided confidential investigative support to the Ethics Commission during the first part of this Fiscal year<sup>1</sup>. The following publicly released reports are not summarized in this report but can be found at: <http://www.montgomerycountymd.gov/oig/igproduct.html>

- *Proposed Disposition of the former Silver Spring Library*
- *Duplicative Expenditures at County Fire Stations*
- *Erroneous receipt of Pension Benefits by A Participant in the county retirement System*
- *A Review of Management Control Deficiencies Contributing to the Misappropriation of Montgomery County Economic Development Funds*
  - *Report of Forensic Investigation of Transactions related to The Montgomery County Department of Economic Development*
  - *Report of Forensic Investigation of Montgomery County, Maryland's Financial Relationship with Certain Vendors of the Business Innovation Network.*

The OIG also routinely responds to complaints and conducts proactive inquiries that may not result in formal reports. During the first half of FY 2019 our office received 39 new complaints and closed 38 complaints including matters carried over from the prior year. Although most of those efforts did not result in independent OIG reports, each had an outcome, some of which were significant. Synopses of select preliminary inquiries and referrals which concluded during the first half of FY 2019 are presented in the body of the attached report.

Consistent with our *Work Plan for Fiscal Years 2018-2021*, during the spring of 2019 we will issue our reviews of the Montgomery County Public Schools (MCPS) Workers' Compensation Program and of the MCPS Telework Program. In addition to completing reviews currently in progress, we plan to initiate reviews of the Montgomery County Workers' Compensation Program, the County Department of Technology Services and the County's implementation of key internal control recommendations identified in the reports released earlier this year.

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<sup>1</sup>When the OIG dedicates resources to a complaint the Ethics Commission has formally referred for investigation pursuant to 19A-10(a)(3) of the ethics law, the OIG is bound by the confidentiality requirements of the law, including the requirement that the report of investigation be confidential.

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## Summaries of Preliminary Inquiries

*(It is OIG policy to respond to Complainants with the results or conclusions on each matter. In each of the following summaries, we have done so, unless the complaint was anonymous.)*

### **Preliminary Inquiry: MCPS Relocation to Holding Facility**

**OIG-18-011**

**Complaint Summary:** The OIG received a complaint alleging that Montgomery County Public Schools (MCPS) failed to conduct an appropriate financial analysis to justify the use of an MCPS holding facility during a revitalization/expansion project at Potomac Elementary School.

Specifically, the complaint alleged that in assessing the cost effectiveness of moving the students off-site during the reconstruction efforts, MCPS failed to take into consideration both transportation and facility costs associated with housing the students at the Radnor Holding Center. No additional specific data or information was furnished in support of the conclusion that housing the students off-site was not cost effective other than the assertion that MCPS claimed that those transportation and facility related costs did not need to be included since they were not construction costs.

**Outcome:** In conducting the review, which included reviewing relevant laws, legal opinions, documentation/correspondence, County Council records, and MCPS School Board proceedings; and interviewing County Council personnel, the OIG was unable to find a sufficient basis to question the accuracy of MCPS's financial data concerning the project and/or the appropriateness of MCPS's decision concerning the housing of the students.

Through its inquiry, the OIG verified that as part of the revitalization/expansion process, MCPS conducted a series of meetings, community and otherwise, during which parents, MCPS staff, members of the Parent Teacher Association, architects and other interested persons participated. In addition to the presentation of the design plans and potential design options for the project under consideration, input was solicited from the participants/attendees with respect to the information presented as well as the housing of students during the construction phase.

MCPS concluded that considering site size, access and age of the students, the security and safety of students, families and staff would be compromised if students were allowed to remain on-site during construction and/or renovation. It was determined that safety and security could best be assured by housing students at the Radnor Holding Center during construction. Further, MCPS found that, from a fiscal standpoint, it was more cost effective to use the holding center. Specifically, MCPS concluded that there would be a cost savings of as much as \$2 to \$3 million from relocating the students off-site during the construction project.

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We learned that the determining factor in MCPS's decision to house students off-site during construction was not based on fiscal or financial considerations but rather on the safety and security considerations that would arise if the students remained on the site during the construction phase. This was the same determining consideration upon which the Board of Education relied when it approved MCPS's proposed plans, inclusive of housing the students off-site, for the revitalization/expansion project.

Based on our limited preliminary inquiry, we found that while cost may have been a factor in the MCPS decision to house the students off-site, the predominant determining factor in that decision was the safety of the students. Accordingly, for those reasons, we concluded that an in-depth financial review was not warranted.

#### ***Preliminary Inquiry: Retaliation Against Whistleblower***

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**OIG-18-031**

**Complaint Summary:** A complainant reported that a subcontractor, working in a County office, was removed from the contract at the request of the County allegedly in retaliation for filing a complaint with the County Equal Employment Opportunity and Compliance Division (EEO). Contractors in the County work place are granted the same ability to access the County EEO process as an employee.

**Outcome:** Extensive investigation by the OIG revealed that the subcontractor was removed after the subcontractor accessed a County computer system in a manner that exceeded the proper authorization and was outside the scope of the contract assignment. As explained by the complainant, the subcontractor's access of these records was intended to demonstrate a vulnerability in the County computer security system to the leadership of the Department of Technology Services (DTS). However, DTS indicated that the subcontractor, who had administrative rights, accessed specific records related to the pending EEO complaint.

No clear evidence of retaliation against the subcontractor was found. The subcontractor was removed from the contract, at the request of the County, for improperly accessing computer systems and databases. Although the subcontractor's information about the vulnerability in the security system was accurate, the subcontractor's decision to explore and demonstrate the vulnerability of a system with which the subcontractor was not actively working appears to have been the proximate cause of the removal request.

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***Preliminary Inquiry: Kickbacks from a County Contractor***

*OIG-18-049*

**Complaint Summary:** The OIG received a complaint alleging that a County manager was accepting gifts from and had an unusually close relationship with a named County contractor. County law prohibits the acceptance of gifts from a person who does business with the employee's agency. The complainant believed that the manager accepted airline tickets for a family member to go on an overseas trip. The complaint identified several individuals the complainant claimed were eyewitnesses or had knowledge of the exchange of tickets.

**Outcome:** Other than confirming that the employee's family member did take an overseas trip, no substantiation of the remaining facts outlined in the allegation was found. OIG staff interviewed or attempted to interview each of the witnesses identified by the complainant. We were unable to corroborate the information presented by the complaint.

***Preliminary Inquiry: Montgomery College Wasteful Spending***

*OIG-19-004*

**Complaint Summary:** The OIG received a complaint alleging financial wrongdoing by the president of Montgomery College. Specifically, the complainant, a former employee of the college, alleged that since 2016, the College President had been receiving reimbursement for costs associated with her personal vehicle (i.e. insurance, maintenance, fuel, registration, etc.) and the use of a college leased vehicle simultaneously. The complainant believed this to be a violation of the College President's contract and/or college procurement regulations.

Secondly, it was alleged that the College President acquired the services of Smith & Company (a public relations entity) at the college's expense in violation of applicable regulations and policy (Section C4 of Board Policy 63001).

**Outcome:** As to the allegation concerning the College President's vehicle expenses, we note that the same allegation was included in news articles that preceded the OIG's review of the oversight exercised over the College President's expenses. The OIG issued a May 31, 2017 Final Advisory Memorandum entitled, *Oversight of the Montgomery College President's Expenses*, which highlights our findings and recommendations related to that review. As we had no findings related to this allegation at the time, the report contains no discussion of that particular issue.

Further, the Board of Trustees of Montgomery College engaged an independent audit firm to evaluate "the effectiveness of the President of Montgomery College expense and travel compliance with Maryland state law, College by-laws, regulations, and policies during the two

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fiscal years ended June 30, 2016.” No exceptions related to the allegation regarding the use of the two vehicles are noted in that report.

As the scope of the independent audit would have included the expenses related to the reimbursements for a personal vehicle and the use of a college leased vehicle, the OIG declined to further investigate allegations regarding the vehicle expenses incurred or reimbursed on behalf of the College President at this time.

In response the second allegation, alleging that College’s contract with Smith & Company violates Section C4 of Board Policy 63001 (Procurement Policy), we reviewed relevant contract documents as well as the referenced policy. We found that the signatory on the contract was the Acting General Counsel for Montgomery College and that the policy specifically states that General Counsel may enter into a special procurement contract for the services of “experts, consultants and investigators...in anticipation of litigation or preparation for a trial or a compliance issue.” According to the documents submitted by the complainant, Smith & Company was retained as “corporate communications consultants.” As the policy gives the General Counsel latitude to hire consultants, we see no indication of a violation related to the policy based upon the facts outlined by the complainant.

#### ***Preliminary Inquiry: Tree Montgomery Procurement Violation***

*OIG-19-008*

**Complaint Summary:** The OIG received a request for an investigation into a County contract related to the Tree Montgomery Program. According to the complainant, the contract was awarded and renewed without required competition. The complainant believed that the County could save money and get better results by putting the contract up for competitive bid.

**Outcome:** OIG staff obtained and reviewed copies of relevant contract documents for the Tree Montgomery Program contract identified by the complainant. We found that the contract was initially awarded following a Request for Proposals (RFP) for Tree Canopy Planting posted in October 2014. As it appears that the contract was competed under the Local Small Business Reserve Program (LSBRP), we determined the allegation was unfounded.

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***Preliminary Inquiry: Investigative Assistance to Ethics Commission***

***OIG-19-023 & 19-035***

**Complaint Summary:** Per authorities granted in the County Code, the OIG provided confidential investigative support to the Ethics Commission. This investigation resulted in facts and evidence which substantiated the complaint.

**Outcome:** With the information provided to it, the Commission was able to resolve the matter in accordance with its internal processes.

***Preliminary Inquiry: Changes to MCEDC Bylaws***

*Internally Generated – No Complaint Number Assigned*

**Complaint Summary:** The OIG proactively developed this preliminary inquiry. The Montgomery County Economic Development Corporation (MCEDC) is a public private partnership that the County has designated as its economic development corporation. On May 30, 2018, as then required in its Bylaws, the MCEDC President and Chief Executive Officer (CEO) wrote to the Council of proposed changes to its Bylaws. During our review of the proposed changes to the Bylaws, we identified several issues that were of concern to the OIG.

**Outcome:** Because we have some experience with non-profit organizations and were in the process of reviewing past issues affecting the former Department of Economic Development, the OIG offered the following comments for consideration by the County Council and the County Executive:

- 1) Signature Authority: The Board proposed the elimination of the Bylaws requirement for two signatures of officers or designated agents on checks for \$5,000 or more. We stated that a two-signature requirement should either remain in the Bylaws or be in the written policies and procedures, as this is a useful internal control for preventing waste, fraud, and abuse.
- 2) Audit Committee: We agreed with the proposal to add the Audit Committee as a Standing Committee of the Board. However, we suggested that someone on the Audit Committee should have professional qualifications that are specified either in the Bylaws or in the written policies and procedures.
- 3) Qualifications: We suggested that professional qualifications for the Treasurer should also be specified in either the Bylaws or in the written policies and procedures. We stated that it may be useful to require that at least one member of the Board have financial management experience.

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The Inspector General and MCEDC management spoke at the Council's Planning, Housing, and Economic Development (PHED) Committee meeting on July 9, 2018. On September 25, 2018, the MCEDC Board Chair wrote to the Council that MCEDC had reviewed the OIG's comments and "found them to be reasonable and acceptable."

The Chair wrote that 1) a provision requiring two signatures under certain circumstances is in MCEDC's Financial Management Policies, 2) MCEDC added to the Bylaws that Finance and Audit Committee members shall have the ability to read and understand fundamental nonprofit financial statements and have the ability to understand key operational and financial risks and related controls, and 3) MCEDC added to the Bylaws that the Treasurer shall have an accounting background or related financial management experience. The Bylaws, as amended by the Board of Directors on September 10, 2018, contain these changes.

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**Summaries of Referrals to Other Entities**

*(It is OIG policy to respond to Complainants with the results or conclusions on each matter. In each of the following summaries, we have done so, unless the complaint was anonymous.)*

***Referral: DOT RideOn Nepotism***

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**OIG-18-092**

**Complaint Summary:** The OIG received a complaint that Department of Transportation (DOT) management improperly hires and/or promoted relatives and friends either as paid interns or regular employees within the DOT Transit Services Division (RideOn). Specifically, it was alleged that management inappropriately hired relatives and others noncompetitively either as interns or in other positions. According to the complainant: persons have been hired or promoted who were not qualified, resulting in qualified persons being passed over; persons have been hired or promoted for positions that have not been posted to allow or afford others the opportunities to apply; persons have been hired or promoted at improper salary levels; and persons have been hired and supervised by relatives.

**Outcome:** The matter was referred to Office of the Chief Administrative Officer (CAO) for management review and appropriate action. In his response, the CAO stated that based on interviews with the complainant and other DOT employees, as well as a review of personnel practices, it was determined that management officials and the personnel in question violated no County policies or requirements.

OIG staff followed up with management to gather details of the review. We were told that it had been found that the purported interns were actually contract employees and had not been hired based on influence and were not supervised by relatives. A review of the relevant personnel related documents for the person purported to be not qualified reflected that the employee had the relevant experience. As to a relative hiring and/or supervising a relative, management determined that the individual in question had recused herself prior to the relative applying for the position and thus was not involved in the relative's hiring. Further, that individual did not supervise the relative once she was hired.

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***Referral: DGS Contractor Abuse***

**OIG-18-095**

**Complaint Summary:** A complainant visited the OIG to report that payment was being unfairly withheld from the Department of General Services (DGS), Division of Fleet Management Services (FLEET) contractor responsible for detailing the RideOn buses. The complainant stated that the Contract Administrator and Contract Monitor consistently set the contracted employees up to fail so that DGS could withhold payment for contracted cleaning services.

Specifically, the contractor received \$48 per bus to return the bus to “showroom clean.” There is a checklist of items that are checked as part of the inspection report and signed off on as satisfactory or not by a crew chief and a FLEET Contract Manager/Supervisor. Per the terms of the contract, if a bus does not pass inspection, the cost of the cleaning of that bus will be deducted from the invoice.

The complainant stated that over a period of months, more and more buses began failing inspection resulting in the contractor operating at a loss. The complainant claimed that in some cases, the contractor had a signed sheet stating that the work is performed satisfactorily for each item yet the contractor was still not paid, as FLEET has stated that a signed sheet with satisfactory marked for each item does not mean that the bus passed.

The complainant believed that the contract administrator and contract monitor instructed the FLEET crew chiefs who perform the inspections not to give the contractor a copy of the paperwork or any feedback at the time of inspection. Instead the contractor was routinely informed that they did not pass after the fact without any opportunity to correct the alleged issues. The complainant believed that FLEET was setting the contractor up to fail no matter how hard they work.

**Outcome:** The matter was referred the CAO for appropriate investigation and resolution. The CAO responded that his office reviewed emails and correspondence between the contractor and DGS. Their review indicates that DGS first began expressing concern with the contract work in August 2017 and their communication of the deficiencies continued until April 2018. The CAO found that as a result of repeated performance deficiencies, a cure notice was issued on April 20, 2018 which requested that the contractor provide a corrective action plan. While the contractor responded to the notice, no corrective action plan was provided to DGS. Another notice was sent on May 24, 2018. The CAO notes that, in the end, the contract was not terminated. Rather, at the contractor’s request, the contract’s renewal options were not exercised, and the contract was allowed to expire on June 30, 2018.

In regards to the payments made under the contract, the CAO states that per the terms of the contract, the contractor agreed to provide enhanced cleaning for at least 30 buses per month at a rate of \$48 per bus. Thus, at a minimum, the contractor could expect to earn \$14,400 per month (\$172,800 total). The CAO found that the payments to the contractor exceeded the minimum.

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The contractor was paid \$183,385 over the course of the contract and only \$4,080 (approximately 2%) was deducted due to non-compliant work.

In summary, the CAO found that DGS staff complied with their responsibilities as contract administrators. The CAO found that on numerous occasions DGS staff attempted to work with the contractor to reduce the frequency of deficiencies and improve contract compliance. Additionally, the CAO found that the Office of Procurement and DGS complied with the County's process to address contract performance deficiencies as set forth in the County's Terms and Conditions contained in the contract.

Based on the CAO's response, the Office of the Inspector General does not intend to engage in any further review regarding this matter.

***Referral: MCPS Worker's Compensation Abuse***

**OIG-18-099**

**Complaint Summary:** A complainant alleged that a Montgomery County Public Schools (MCPS) employee had been out of work and receiving workers' compensation benefits for 3-4 months. However, the employee was seen performing manual labor on his property and appeared to be physically capable of working. The allegation included specific statements made to the complainant by the employee that appeared to be inconsistent with activities the employee was observed performing.

**Outcome:** Because MCPS employees receive workers' compensation benefits through MCPS' participation in the Montgomery County Self Insurance Fund (MCSIF), this matter was referred to both MCSIF and MCPS. As result of our referral, the individual was placed under surveillance. Investigation of the employee's daily activities revealed nothing incompatible with their workers' compensation status. Additionally, MCSIF and MCPS requested, and obtained, an independent medical exam of the employee. The results of that examination supported further treatment and rehabilitative work hardening<sup>2</sup>. The matter was closed.

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<sup>2</sup> According to the LexisNexis Legal News Room website, as it applies to workers' compensation matters, "Work hardening is an intensive program with defined goals designed to assist the injured employee to return to work performing the tasks of his/her regular job. Work hardening will also teach an employee proper ergonomics and train the employee to work safely and to prevent re-injury." Obtained from <https://www.lexisnexis.com/legalnewsroom/workers-compensation/b/recent-cases-news-trends-developments/posts/work-hardening-bridges-gap-between-unable-and-able-to-work>, last accessed April 3, 2019.

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##### ***Referral: Unprofessional Veterinary Care at MCPD Animal Services***

**OIG-19-003**

**Complaint Summary:** The OIG received a complaint alleging that a Veterinarian working for the Montgomery County Police Department (MCPD), Animal Services Division was unprofessional, provided substandard care, and roughly handled animals housed at the Animal Services and Adoption Center. The complainant described 3 separate incidents that purportedly occurred in public view on the same night.

**Outcome:** The matter was referred to the Office of the Chief Administrative Officer (CAO) for appropriate investigation and resolution.

In response to the referral an Assistant CAO wrote, “MCPD investigated this complaint and determined there was no wrongdoing on the part of [the veterinarian]. [The Director of the MCPD Animal Services Division] conducted the interviews and reviewed records associated with each of the three listed complaints. There was no evidence to support any of the allegations. There was, however, evidence of the cats having existing behavioral and/or medical challenges that created some of the situations faced by [the veterinarian]. Additionally, it was determined that the medical care provided to all of the animals was appropriate... As a result, this case has been closed administratively.”

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##### ***Referral: MCFRS Personal Email Use***

**OIG-19-007**

**Complaint Summary:** The OIG received a complaint alleging that a Montgomery County Fire and Rescue Service (MCFRS) employee was using the County email system to promote his personal business. The complainant stated that the MCFRS employee had periodically sent promotional emails to County employees over the past year and a half, both from his County email and from a private business email account.

**Outcome:** The matter was referred the Ethics Commission for appropriate review and resolution. In response, the Chief Counsel/Staff Director Ethics Commission (Ethics Commission Director) told the Inspector General that the employee had obtained approval from the Ethics Commission to engage in the side business. However, based on his personal use of the County email system, the Ethics Commission could consider revoking that permission.

The Ethics Commission Director stated that it was his intention to contact the employee and explain that permissions may be revoked unless the employee ceases using County time and systems to further his personal business.

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***Referral: Medicaid Fraud***

***OIG-19-022***

**Complaint Summary:** A non-English speaking resident of the County contacted the OIG via telephone, and a member of the OIG staff who is fluent in that language was able to interview the individual. The complainant said she was approached by a member of her community and told that if she provided certain identity documents this person could obtain benefits through Medicaid and other sources for the complainant. Concerned about possible fraud, the complainant said she tried contacting various state, federal and local agencies to no avail. Based on the events she described to the OIG and the fact that she had already tried to report the incident to other agencies, the OIG made inquiries on her behalf to locate the appropriate agency to assist her.

**Outcome:** The OIG referred the matter to the Montgomery County Police Department (MCPD), and a criminal investigation was opened and assigned to a detective for investigation. MCPD later advised us that an initial investigation revealed that the suspect, who either works for or has a contact within Medicaid, was targeting numerous members of the complainant's community. The criminal investigation is on-going. As this was criminal matter and was now being appropriately investigated, the OIG case was closed.

If you are aware of fraud or misconduct  
in County government activities,  
contact the County Inspector General



- 📞 Confidential OIG Hotline: 240 777 7644
- ✉️ ig@montgomerycountymd.gov

Edward L. Blansitt III  
Inspector General

51 Monroe Street, Suite 802  
Rockville, Maryland 20850  
240 777 8240  
[montgomerycountymd.gov/oig](http://montgomerycountymd.gov/oig)