



# INVESTIGATIVE REPORT

David Cook, Inspector General

OFFICE: INDIANA DEPARTMENT OF TRANSPORTATION (INDOT)  
TITLE: FORMER INDOT EMPLOYEE MISUSE OF STATE PROPERTY AND GHOST  
EMPLOYMENT  
CASE ID: 2023-11-0432  
DATE: June 14, 2024

*Inspector General David Cook after an investigation by Inspector General Special Agent J. Jason Fajt reports as follows:*

The Indiana General Assembly charged the Indiana Office of Inspector General (OIG) with addressing fraud, waste, abuse and wrongdoing in the executive branch of state government. Ind. Code §4-2-7-2(b). The OIG also investigates criminal activity and Code of Ethics<sup>1</sup> violations by state workers. Ind. Code §4-2-7-3.

## **I. Complaint and Background**

On November 30, 2023, the OIG received a complaint alleging that Indiana Department of Transportation (INDOT) Maintenance Operations Supervisor 3 Zachary Rutherford had solicited a woman to meet him in his state vehicle at a work site to engage in sex. INDOT's Investigation Manager conducted a brief examination of Rutherford's state issued cell phone and located sexually explicit images that were sent and received on that phone. INDOT terminated Rutherford from state employment on November 16, 2023.

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<sup>1</sup> The Indiana Code of Ethics is found in Ind. Code 4-2-6 and 42 IAC 1.

## **II. OIG Investigation**

Special Agent J. Jason Fajt investigated the complaint for the OIG. Special Agent Fajt received Rutherford's state issued cell phone and I Pad from INDOT and transferred both items to a Secret Service Intrusion Forensic Analyst (NIFA) for examination. NIFA returned the items to the OIG because the Indiana Office of Technology (IOT) had profiled a setup that prevented access to both devices. The OIG then submitted both Rutherford's state issued cell phone and I Pad to IOT where both devices were retired from the MDM Ivanti, enabling both devices to be accessed. The OIG then resubmitted both devices to NIFA for forensic analysis.

Thereafter, in January of 2024, the OIG received the reports back from NIFA in the form of Cellbrite and AXIOM Reports. Special Agent Fajt's examination of those reports revealed evidence that Rutherford had contacted four women, with private cell numbers 1 through 4, on his state issued cell phone during work hours.

On October 11, 2023, during INDOT work hours, Rutherford, using his state issued cell phone, contacted private cell number 1 and engaged in graphic sexual texting where images of a women's breast and images of Rutherford in his work shirt were exchanged. Messaging included requests for sex, more explicit images to be exchanged and proposed times and locations to meet. Rutherford engaged in sexually graphic and suggestive texting for approximately one hour and forty minutes during work hours.

On October 19, 2023, and October 24, 2023, during INDOT work hours, Rutherford, using his state issued cell phone, contacted private number 2 and engaged in friendly, nonsexual chat. The conversations were unrelated to any of Rutherford's work duties or assignments and continued

continuously for approximately one hour and forty-seven minutes for the October 19<sup>th</sup> call and thirty minutes for the October 24<sup>th</sup> call.

Again, on October 19, 2023, during INDOT work hours, Rutherford, using his state issued cell phone, contacted private cell number 3. During the one hour and four minutes of continuous texting, Rutherford exchanged innocent pictures and inquired about possible meetings places including his coming to her residence or her meeting him on the side of the highway for sex. Later, on October 23, 2023, Rutherford again, during work hours, using his state issued cellphone contacted private cell number 3 attempting to arrange a meeting for sex. Those texts continued for approximately twenty minutes.

Also, on October 19, 2023, during INDOT work hours using his state issued cell phone, Rutherford contacted private cell number 4 and exchanged sexually graphic images including images of exposed breasts, an exposed vagina and an exposed penis. Rutherford spent approximately two hours and nine minutes of continuous texting on nongovernment, sexually related matters. Again, on October 24, 2023, Rutherford contacted private number 4 during works hours using his government issued cell phone and made attempts to arrange a meeting. This contact lasted approximately twenty minutes. In total, Rutherford spent six hours and fourteen minutes texting messaging and exchanging sexually oriented images during work hours. Some calls overlapped. The loss to the State from Rutherford's misuse of the state issued cell phone is \$226.28.

On January 24, 2024, Special Agent Fajt met with Rutherford who gave a voluntary statement admitting to the improper phone calls and sexually oriented messaging, as described in the foregoing paragraphs, all during work hours using his state issued cellphone. Rutherford acknowledged that INDOT terminated him on November 16, 2023, because of this misconduct.

### III. Conclusion


In that the OIG investigation revealed substantial evidence to support violations of the Indiana Code of Ethics, the OIG sought probable cause to file an Ethics Complaint with the Indiana State Ethics Commission (SEC). On March 14, 2024, the SEC found probable cause that Rutherford committed ghost employment and misuse of state property. Thereafter, on March 18, 2024, the OIG filed an Ethics Complaint against Rutherford with the SEC for ghost employment in violation of 42 IAC 1-5-13 and Misuse of State Property in violation of Ind. Code §4-2-6-17.

On March 21, 2024, Rutherford entered into an Agreed Settlement with the OIG wherein he admits to the violations as set out in the Ethics Complaint, and he agrees to repay the loss to the State in the amount of \$226.88 and a fine of \$250 for a total of \$476.28. Under the Agreed Settlement, Rutherford must pay the total amount to the SEC within ten days from the date the SEC approves the Settlement Agreement.

On June 13, 2024, the SEC approved the Agreed Settlement. As such, the OIG is closing this case with no further action.

Dated: June 14, 2024

APPROVED BY:



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David Cook, Inspector General