



State of Ohio
Office of the Inspector General

THOMAS P. CHARLES, Inspector General

REPORT OF INVESTIGATION

FILE ID NUMBER: 2007090

AGENCIES: Ohio Department of Transportation

BASIS FOR INVESTIGATION: Inspector General Initiative

ALLEGATIONS: Mismanagement, Waste, Fraud and Abuse

INITIATED: February 28, 2007

DATE OF REPORT: January 30, 2008

EXECUTIVE SUMMARY

File ID No. 2007090

On February 28, 2007, the Office of the Inspector General (“OIG”) opened a wide-ranging investigation into allegations of mismanagement, waste, fraud and abuse at the Ohio Department of Transportation (“ODOT”) under former Director Gordon Proctor. Proctor resigned in January 2007, after nearly eight years at the helm of ODOT, following a change in administration with the election of Governor Ted Strickland.

Our investigation found that Proctor ignored the recommendations of two selection committees in 2000 and elevated his former carpool partner, Shobna Varma, from a low-level systems analyst to Director of Information Technology for one of the state’s largest agencies. While it was not beyond his discretion to do so, Proctor’s promotion of Varma, his nurturing of her professional development and his protective attitude toward her in her many disputes with colleagues during the following six years made her a lightning rod for criticism at ODOT until the day she was fired by the new administration.

Proctor’s attention to Varma and ODOT’s IT division colored his relationships with virtually every senior manager at ODOT. He frequently told subordinates that Varma was “the smartest person at ODOT,” an observation many employees attributed to the “blind spot” of an otherwise brilliant administrator. That blind spot, we found, resulted in a pattern of questionable judgments by Proctor. They include his decision to disregard the two selection committee recommendations, his decision to override an analysis done by his Human Resources division in the setting of Varma’s salary, and his decision to designate Varma as a classified employee even after his chief legal counsel provided a legal analysis showing that the position was unclassified.

Consistent with this history of inordinate attentiveness to Varma, Proctor in April 2007 attended a status conference at the State Personnel Board of Review on her behalf after

Varma appealed her January 10, 2007, dismissal by ODOT. That decision appears to violate Ohio's "Revolving Door" statute, which forbids a public employee, within 12 months of leaving office, from representing any person, before any public agency, in a matter in which he personally participated while in office. Consequently, we are referring this matter to the Columbus City Prosecutor's Office and the Ohio Ethics Commission.

Proctor also made other misjudgments involving Varma. They include his decision in 2006 to authorize the recall of an Employee Satisfaction Survey, which he commissioned for \$49,800 from a New York consulting firm, based on a false premise. ODOT Human Resources officials said Proctor ordered the recall because the report contained numerous critical comments about himself, Varma and ODOT's IT division. Feeling pressured to recover the reports promptly, another ODOT official sent an email to recipients stating that the report contained a significant data error. The copies were then placed under lock and key and the report was only re-released after the controversy had died down. Lacking Proctor's support, the initiative for institutional change then died.

In the course of this investigation, we also learned that Cambridge Systematics Inc., a transportation consulting firm in Massachusetts, paid Varma more than \$20,000 during the summer of 2007, and that she may have done consulting for the firm while she was collecting \$355 a week in state unemployment compensation benefits. We have referred this matter to the Ohio Department of Job & Family Services' unemployment compensation fraud unit for further investigation.

Additionally, Varma reported in the post-employment disclosure statement she filed with the Joint Legislative Ethics Committee ("JLEC") that she would not receive income from any entity that was awarded state contracts totaling \$100,000 or more within the two years preceding her employment at ODOT. In fact, she signed a consulting contract in March 2007 with Cambridge, a firm that did nearly \$350,000 in business with ODOT in 2005 and 2006. As a consequence, we are referring this matter to JLEC and the Ohio Ethics Commission.

We also examined a decision by Proctor and Howard Wood, currently ODOT's acting deputy director of planning, to allow Proctor to speak on ODOT's behalf at a transportation conference in Washington, D.C., in January 2007. At the time, Proctor was no longer director of ODOT and Wood had been approved by his superiors to give the speech, which cost the agency \$1,118 in travel expenses. Although we did not find that Proctor's and Wood's actions rose to the level of wrongdoing, we question Wood's decision not to first seek the approval of the new administration before making the trip. We also question whether Wood should have traveled to the conference at all, considering that he knew beforehand that he would not be speaking.

Due to the fact that the allegations addressed in this report pertain primarily to the actions of two administrators who no longer work for ODOT, we are making no recommendations.

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I. BASIS FOR INVESTIGATION

On February 28, 2007, the Office of the Inspector General (“OIG”) initiated an investigation into allegations of favoritism and mismanagement involving Gordon Proctor, former director of the Ohio Department of Transportation (“ODOT”). The allegations pertained primarily to Proctor’s promotion of, and relationship with, Shobna Varma, ODOT’s former Deputy Director of Information Technology. We also investigated five other substantive matters pertaining to Proctor and/or Varma, as well as several other minor issues.

II. ACTION TAKEN IN FURTHERANCE OF INVESTIGATION

We reviewed ODOT project files, email correspondence, phone records, payroll records, job applications and other Human Resources documents; State Personnel Board of Review filings; Ohio Civil Rights Commission documents; Ohio Ethics Commission financial disclosure statements and requests for opinion; and bank records obtained via subpoena. We also interviewed dozens of current and former ODOT employees, including both Proctor and Varma, and consulted with Ohio Ethics Commission and Department of Job & Family Services staff.

III. DISCUSSION

Proctor served as Ohio’s director of transportation from May 19, 1999, until January 8, 2007, when he resigned following the election of Governor Ted Strickland. He is currently the chief executive officer of Gordon Proctor & Associates Inc., a transportation consulting firm that he runs out of his Dublin home.

Varma was employed by ODOT from August 31, 1992, until January 10, 2007, when she was fired by then-Acting Director Keith Swearingen. Varma appealed her dismissal to the State Personnel Board of Review (“SPBR”) on January 18, 2007. On September 7, 2007, the SPBR dismissed her appeal for lack of jurisdiction. Varma is the president and

CEO of Ra-Lux Corporation, a transportation consulting firm that she runs out of her Lewis Center home.

On July 11, 2000, Proctor overrode the recommendations of two selection committees and promoted Varma from a bargaining-unit systems analyst to Data Systems Administrator, a senior management position equivalent to a Deputy Director 6 – a jump of four pay grades. At the time, Proctor and Varma were friends and had carpooled to work together prior to Proctor’s promotion from chief of staff to director.

Interviews with numerous current and former ODOT employees substantiate that in the years following her promotion, Varma became Proctor’s closest confidant at ODOT and functionally served as the agency’s No. 2 official. Senior administrators who criticized her did so at their peril. Several who did – including two of Proctor’s assistant directors, his chief fiscal officer and his director of human resources – left the agency or fell into disfavor with Proctor after criticizing Varma.

Following ODOT’s dismissal of Varma, Proctor phoned and emailed several ODOT administrators and a member of Governor Strickland’s transition team to chastise them for allegedly conspiring to have Varma removed. On April 25, 2007, Proctor attended an SPBR status conference to speak on Varma’s behalf after she appealed her dismissal. Proctor subsequently assisted Varma in the drafting of an eight-page “jurisdiction brief” that she filed with the SPBR.

Varma is currently working as a subcontractor to Proctor on a \$300,000, 18-month consulting contract that Proctor signed with the Transportation Research Board. Cambridge Systematics is also working as a subcontractor to Proctor on the project. Cambridge was under contract with ODOT during Proctor’s administration and did more than \$750,000 in business with ODOT between 2001 and 2006.

Allegation 1: ODOT's use of a selection committee to fill the position of Deputy Director of the Division of Information Technology was a waste of time, effort and resources.

ODOT records show that Varma applied for the position of director of the Division of Information Technology (“DoIT”) on March 17, 2000. Following the retirement of DoIT chief Dave Fuhrman, ten others also applied for the post and a four-member selection committee,¹ headed by then-Assistant Director Tom McPherson, was appointed to vet the candidates. Proctor contends that the committee was formed with his knowledge but without his input.

Two committee members said they expressed concerns to McPherson early on that the committee was a charade because Proctor intended to hire Varma, but they said McPherson assured them that Proctor sought the best available applicant. Subsequently, committee members conducted interviews with the eleven candidates in April 2000. They then recommended three finalists – Joe Rutherford, Anna Kraner and Ed Ickert.

One of the committee members – Carla Cefaratti, ODOT Deputy Director of Local Programs – kept scoring sheets of the interviews, ranking Rutherford, Kraner, Ickert and another candidate above Varma (Exhibit A). Cefaratti told us that Varma performed “very poorly” in the interview, saying she “lacked a vision for the agency” and took credit for the work of others. Cefaratti gave Varma low marks for leadership, management experience, communication skills and vision, and had Varma tied for fifth with two other applicants. Scoring sheets from the other committee members were not maintained in Varma’s personnel file.

Cefaratti also filled out a second scoring sheet (Exhibit B), which elevated Varma’s score slightly while leaving the other candidates’ scores intact. Cefaratti said she raised

¹ Members of the committee were Fuhrman; Carla Cefaratti, currently ODOT Deputy Director of Local Programs; Bob Blair, then-Deputy Director of Human Resources; and Mike Cope, then-Chief Fiscal Officer.

Varma's score because she knew that Proctor would be reviewing her scores and didn't want him to know that she had such a low opinion of Varma. As a result, she said, she improved Varma's score in the "vision" category. Nevertheless, Cefaratti said her and the other committee members' finalists remained Rutherford, Kraner and Ickert, with Rutherford, who then headed IT operations in ODOT's District 2 office in Bowling Green, as the consensus top pick.

McPherson said Proctor was upset by the committee's exclusion of Varma and ordered that she be included in the final cut. The four finalists were then vetted by a second committee consisting of McPherson and fellow assistant directors Cash Misel and Mary Ellen Kimberlin. Once again, the recommendation was to hire Rutherford. Once again, Proctor disagreed. This time, Proctor made the decision himself, appointing Varma as Deputy Director of DoIT on July 2, 2000.

Clearly, it is within the purview of the director of ODOT to select his own IT chief, and we do not question his authority to do so. However, we do note that the promotion of a bargaining unit employee to agency deputy director is highly unusual. In an interview with OIG,² Proctor said Varma was "clearly the most qualified person," and he blamed McPherson for the ensuing controversy over her hire, contending that McPherson was biased against Varma and had "packed" the committee with his adherents. "If I made a mistake, it was promoting Tom," Proctor told us. Proctor also said he believed that the other assistant directors had capitulated to McPherson because they knew that McPherson "detested" Varma.

McPherson countered that by overruling the recommendations of both committees, Proctor "made a mockery of our process." Two members of the first selection committee

² Prior to his interview with OIG on December 18, 2007, Proctor and his attorney, Christopher Jones, questioned the objectivity of the investigator assigned to this case. In an effort to accommodate their concerns, with which we disagree, the deputy inspector general who supervises all ODOT investigations was assigned to interview Proctor in the presence of his attorney. This report, and the extensive documentation on which it relies, was then peer-reviewed and edited by several senior deputies, the OIG chief legal counsel and the state inspector general himself prior to its release.

told us they agreed with that assessment and said their work had been an exercise in futility because, as they suspected, Proctor had always intended to hire Varma.

In summary, Proctor had the discretion to hire Varma outright without any input from a selection committee. He even had the discretion to disregard both committees' recommendations. However, since a selection committee process was used, there is an expectation of integrity in that process. Regardless of whether we believe Proctor or McPherson and his allies, the selection process was an exercise in futility. The use of a committee thus was unquestionably a waste of time, effort and resources.

Accordingly, we find reasonable cause to believe a wrongful act occurred in this instance.

Allegation 2: Former Director Gordon Proctor displayed favoritism toward Shobna Varma by misclassifying her and inflating her salary.

At the time of her hire, Varma was a Systems Analyst 1, a bargaining unit employee making \$29.75 an hour. Her promotion jumped her four pay grades, initially increasing her salary to \$33.26 an hour (Exhibit C). Less than a month later, Proctor signed a "corrective" Personnel Action form that increased her salary to \$41.28 an hour by elevating her from pay range 18, step 1, to pay range 18, step 5 (Exhibit D) – a 39 percent increase in pay.

For background purposes, each step increase represents a 3 to 4 percent pay raise. State law permits so-called "advance-step" increases³ only in cases where the employee has "exceptional" qualifications or where there is a labor market shortage in the classification being filled. In Varma's case, ODOT records show that a review of her qualifications by ODOT's Human Resources Division determined that she could qualify for an advance-

³ Section 124.15(E) of the Ohio Revised Code states that employees "with qualifications that are beyond the minimum normally required for the position and that are determined by the director to be exceptional may be employed in, or may be transferred or promoted to, a position at an advanced step of the range."

step increase to step 3 – not step 5 – but that she would first have to fill out a Civil Service application and submit a résumé.

During our interview with him, Proctor bristled at questions about Varma’s advance-step increases. He said he recalled that Bob Blair, then-ODOT Deputy Director for Human Resources, “came shuffling” into his office to ask him what Varma should be paid. “I recall being quite short with him . . . and said, ‘Why are you asking me?’ and said, ‘Put her in whatever classification and whatever rate of pay that you advertised.’ ” Proctor and his attorney disavowed Proctor’s responsibility for Varma’s advance-step increase, saying that someone else signed the Personnel Action on Proctor’s behalf and that he should not be held accountable for every appointment or pay raise that bore his signature.

Blair and McPherson remember the discussion about Varma’s advance-step increase differently. Blair said that either Proctor or McPherson ordered him to advance-step Varma so that she would be paid what ODOT had paid her predecessor. McPherson said the order must have come from Proctor because he had opposed Varma’s promotion from the start and had no involvement in setting her salary. (We note that Fuhrman, a 35-year ODOT employee, was making \$43.59 an hour when he retired. Varma, who had worked for ODOT for less than eight years, was hired as Fuhrman’s replacement at \$42.61 an hour, including longevity pay.)

Consistent with Varma’s fast-tracked promotional path, her career as the head of DoIT also was marked by irregularities. Unlike Fuhrman, who was unclassified and served at the pleasure of the director, Varma was designated by Proctor shortly after her promotion as a classified member of the Career Professional Service. Proctor also made Varma a direct-report to him after McPherson informed the director that he could no longer supervise Varma because she refused to take direction. Varma claimed that she got along fine with McPherson and only began reporting to Proctor because McPherson left ODOT shortly after she was promoted. We note that McPherson did not retire until May 2003, nearly three years after Varma’s promotion.

In August 2002, ODOT's then-Director of Human Resources, Anne Fornshell, sent a memorandum (Exhibit E) to Proctor that contained a litany of errors and mistakes that ODOT had made in relation to Varma's promotion. Fornshell noted that Varma was designated as a classified employee even though her predecessor, Fuhrman, was not; said Varma had not taken a drug test, passed a background check or filed financial disclosure statements with the Ohio Ethics Commission; and noted that Varma's hire had not been approved by the governor's office, as was required of employees earning \$19 an hour or more.

Fornshell's memo generated an immediate response from Proctor (Exhibit F), who said he didn't understand why no drug test or background check had been done; said he believed Varma's hire had been cleared by the governor's office; and said that Varma should be placed in the same classification as Fuhrman. Despite that last edict, and despite a legal analysis by his chief legal counsel (Exhibit G) that Varma was, by law, an unclassified employee, Proctor did not change her employment status while he was director.

Because Proctor ultimately had the discretion to disregard recommendations made by his Human Resources officials and his chief legal counsel, these actions do not rise to the level of wrongdoing. However, they do illustrate a clear pattern of protective conduct in Proctor's relationship with Varma.

Accordingly, we do not find reasonable cause to believe a wrongful act or omission occurred in this instance.

Allegation 3: ODOT officials distributed false information to justify the recall of an Employee Satisfaction Survey.

In 2005, Proctor hired The Leadership Factor, a consulting firm in Rochester, New York, to conduct an agency-wide Employee Satisfaction Survey ("ESS"). ODOT's District 12

office in Garfield Heights earlier that year had won a prestigious Malcolm Baldrige award for organizational excellence from the Ohio Partnership for Excellence after hiring The Leadership Factor, and Proctor hoped to replicate District 12's success.

Supported by the Ohio Civil Service Employees Association, whose leadership helped to generate a 92 percent response rate, the ESS was a major undertaking by ODOT's Human Resources division and cost the agency \$49,800. However, when the report was published on March 15, 2006, the results were critical of ODOT and revealed serious morale problems. When compared with The Leadership Factor's other public and private sector clients worldwide, ODOT's "satisfaction index" scored "slightly below average," the report concluded.

The ESS also included a lengthy comments section – a standard component of such reports, according to Leadership Factor President Bill Self – in which ODOT employees were allowed to comment anonymously on the agency's strengths and weaknesses. That section of the report reflected hostility toward Proctor, Varma and the IT division. In dozens of comments, Varma was accused of running her own fiefdom and not being responsive to the needs of the agency, and Proctor was criticized for displaying favoritism toward Varma and giving her unprecedented power at ODOT.

Although Proctor had a copy of the report weeks before its formal presentation, it was not until the day the report was presented to him and disseminated to deputy directors in ODOT's central and district offices that Proctor was alerted to the critical comments about himself and Varma. Chris Dietsch, the former director of Human Resources, said she received a frantic phone call from Proctor's chief of staff that afternoon, informing her that Proctor was "livid" about the comments and was demanding that the report be recalled immediately. When she asked how she was to justify such an extraordinary action, Dietsch said Proctor's chief of staff, Andrew Gall, simply told her to "come up with an excuse."

Worried that she was about to be fired, Dietsch sent an email (Exhibit H), with Proctor and Gall copied, to all recipients of the report in which she said the report contained “an error of significant proportion” and was to be returned “ASAP.” The email also contained the following admonition: “Do not make copies of anything nor share the information contained therein with any one (sic) at this juncture until the corrections can be made.”

Dietsch told us that the claim that the report had a significant data error was false and that she used it as a ruse because she felt pressured to retrieve all copies immediately or face Proctor’s wrath. Steve Wall, then-Deputy Director for Organizational Development, and Kelly Maynard, then-manager of ODOT’s Educational Assistance Program, confirmed that the excuse used to recall the report was false and was employed out of desperation to comply with Proctor’s order.

Proctor denied being specifically upset by the comments about himself and Varma, saying he ordered the recall because he was shocked that the report included “unfiltered statements” and thought “we were exposing ourselves to liability.” He also described the survey as “highly flawed,” saying, “Statistically, it was not a valid survey.” Despite his criticisms of the survey today, however, Proctor did not document his concerns in any memos or letters at the time, nor did ODOT withhold any payments to The Leadership Factor.

Gall had a different recollection of the recall. He said he considered the survey to be valid and even viewed the anonymous comments as an “opportunity for improvement,” but said the survey was too widely disseminated, allowing deputy directors of various divisions at ODOT headquarters to view the comments made by employees in all divisions. Gall agreed that the email recalling the report was inaccurate, describing it as “overstated.”

Self disputed Proctor’s claim that the survey was flawed, saying that while Proctor may have been disappointed in the results, the director never told him that he thought the survey was poor or the results invalid.

Maynard said Self discussed the parameters of the survey with ODOT staff beforehand, including the fact that it would contain a section in which survey participants could comment anonymously about their superiors. She said The Leadership Factor's report on District 12, which had been well-received by Proctor and other senior staff, also included an anonymous-comments section.

Proctor claimed that Dietsch told him she did not read the report before its release, a claim Dietsch vehemently denied to us. Proctor also said the comments section was filled with pointless carping about individuals, and he recalled issuing the following order: "I said, 'Go get them; I don't care where they are, go get them.' "

Dietsch and Maynard said most of the recipients were suspicious of the stated reason for the recall. The ensuing "drama," Maynard said, spurred claims of a cover-up and prompted numerous sarcastic comments about Proctor and Varma. "My thought was put it (the report) out there, let the scandalousness die down and complete the task," Maynard told us. Instead, she said, she was ordered to lock the reports in a cabinet and await further instructions.

When the report was released a second time, several weeks later, it again included the anonymous-comments section, but the report was distributed to a narrower audience. Within central office, deputy directors in charge of individual divisions only received the comments made by employees in their divisions. The end result, according to Human Resources employees involved in the study, was that an initiative that had generated so much enthusiasm within ODOT less than a year earlier ran out of gas because it no longer had Proctor's support.

Regardless of the "real" reason for the recall, it is indisputable that the recall was based on a false premise. We also question Proctor's assertion that the report was not a valid survey, given the fact that he permitted it to be re-released without "correcting" the

alleged flaws. Further, we question the expenditure of public money on a survey that was mismanaged and whose results were largely ignored.

Accordingly, we find reasonable cause to believe a wrongful act occurred in this instance.

Allegation 4: Following Proctor’s resignation, an ODOT deputy director permitted Proctor to serve as a substitute speaker for him at a national transportation conference.

In October 2006, Howard Wood, then ODOT’s deputy director of planning, agreed to be a speaker at the Transportation Research Board’s (“TRB”) annual conference in Washington, D.C. The topic of the speech Wood was to deliver on January 26, 2007, was “State’s Point of View on Financing Freight Intermodal Infrastructure,” a presentation on investing public transportation dollars in private facilities such as Ohio’s Rickenbacker Air National Guard Base.

On the date of Wood’s speech, however, Wood remained seated in the gallery as Proctor was introduced as the substitute speaker. Proctor had resigned as ODOT director approximately two weeks earlier following the election of Governor Strickland.

An audio recording of Proctor’s speech⁴ indicates that Wood is sitting in the audience, but the moderator says only that Wood “is not speaking today for some reasons that I won’t go into.” The moderator goes on to say that he, Proctor and Wood jointly agreed to the substitution, adding “if you want to know the details, we can get into it later.”

In his interview with OIG, Wood said he asked Proctor to give the speech because he was scheduled to give a “contrarian viewpoint” of public investments in Rickenbacker and “didn’t feel comfortable representing the Strickland administration” because he didn’t

⁴ <http://onlinepubs.trb.org/webmedia/trbweb/AM2007/281/wood/index.htm>

know whether the new administration's stance on such investments jibed with the position of the previous administration. Proctor recalled the discussion slightly differently, saying, "Howard came to me and said, 'You know, when the administration changes, I don't know if I'll be here.'" Both men agree that the decision to substitute Proctor for Wood was made near the end of 2006, well before the conference.

With Proctor gone and ODOT's current director, James Beasley, and Chief of Staff Steve Campbell still not on board, the issue of the propriety of Wood's conduct was brought to the attention of then-Acting Director Swearingen by Dietsch on February 16, 2007. Four days later, Campbell was hired. Campbell said Wood approached him shortly thereafter to address another rumor that was circulating – that Wood and Proctor were preparing to go into business together.

Campbell said Wood assured him that the rumor was untrue. Campbell said he then asked Wood about Proctor's substitution for him as speaker at the TRB conference. He said Wood told him he was uncomfortable speaking on behalf of the new administration. Campbell said he responded by telling Wood that he had used poor judgment by failing to clear the decision with his superiors and for failing to ask whether he should attend the conference at all if he wasn't speaking. Wood's travel expense report shows that ODOT paid \$1,118 to send him to Washington, D.C.

Although Wood's actions do not rise to the level of wrongdoing because he plausibly argues that he would have attended the TRB conference even if he had not been asked to speak, we concur with Campbell's assessment. Wood did use poor judgment.

Accordingly, we do not find reasonable cause to believe a wrongful act or omission occurred in this instance.

IV. REVOLVING DOOR AND OTHER POST-EMPLOYMENT ISSUES

By statute,⁵ the Deputy Director of DoIT is an unclassified employee who serves at the pleasure of the director. Despite the fact that Varma's predecessor, Fuhrman, was unclassified, Proctor in 2000 designated Varma as a classified member of the Career Professional Service, making her immune to discipline or removal for reasons other than poor performance. Proctor designated no other employees at Varma's level as being classified.

On January 8, 2007, the day Proctor resigned, Governor Strickland appointed Keith Swearingen as acting director. One of Swearingen's first actions that day was to determine that Proctor had misclassified Varma. He then asked Carol Nolan Drake, then Ohio's Director of Administrative Services, to place the position of Data Systems Administrator in the unclassified service in accordance with state law. Drake did so on January 9, 2007, and Swearingen terminated Varma on the following day.

Consistent with his prior pattern of conduct, Proctor weighed in on Varma's behalf, phoning and emailing several former colleagues whom he suspected of conspiring to orchestrate Varma's removal. They included Bob Campbell, a member of Governor Strickland's transition team who had served as Proctor's chief of staff. Campbell said Proctor railed at him that Varma was the top IT professional "in the state of Ohio and what you guys did is unconscionable."

On January 18, 2007, Varma appealed her dismissal to the SPBR, arguing that she had been improperly reclassified and had properly been designated by Proctor as a classified

⁵ Section 5501.04 of the Ohio Revised Code states: "The following divisions are hereby established in the department of transportation: . . . (E) The division of information technology . . . Each division shall be headed by a deputy director, whose title shall be designated by the director, and shall include those other officers and employees as may be necessary to carry out the work of the division. The director shall appoint the deputy director of each division, who shall be in the unclassified civil service of the state and shall serve at the pleasure of the director. . . ."

member of the Career Professional Service. Varma asked the SPBR to reinstate her and to award back pay and benefits. The SPBR scheduled a status conference on the case for April 25, 2007, which was attended by both Varma and Proctor. Varma was not represented by legal counsel.

Post-employment restrictions pertaining to public employees are addressed in the “Revolving Door” prohibition of the Ohio Ethics Law,⁶ which forbids a public employee from representing any person, before any public agency, in a matter in which he personally participated while in office. Prior opinions by the Ohio Ethics Commission make it clear that the restriction applies “regardless of whether the official is paid to represent the person.” They also define representation as occurring “when the official makes any kind of formal or informal appearance before, or has any kind of written or oral communication with, any public agency on behalf of that person.”⁷

Both Proctor and Varma contended in their interviews that Proctor, who is not a lawyer, did not “represent” his former IT director before the SPBR. Nevertheless, Proctor and his lawyer did concede that Proctor attended and spoke on Varma’s behalf because they said Varma needed to have someone present who could discuss her status as a career professional and she couldn’t rely on ODOT’s Human Resources Department because personnel there had assisted in her dismissal. Varma said much the same, adding that she requested Proctor’s presence. Varma also acknowledged to us that Proctor later reviewed and “may have provided some facts” for an eight-page brief that she filed with the SPBR on May 23, 2007.

Regardless of Proctor’s and Varma’s characterization of, and justification for, Proctor’s participation in the April 25, 2007, SPBR proceeding, Proctor’s actions appear to violate

⁶ Section 102.03(A)(1) of the Ohio Revised Code states: “No present or former public official or employee shall, during public employment or service or for twelve months thereafter, represent a client or act in a representative capacity for any person on any matter in which the public official or employee personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion.”

⁷ http://www.ethics.ohio.gov/EducationandPublicInfo_IS5_RevDoorPostEmp.html

Ohio's Revolving Door statute. Consequently, we are referring this matter to the Columbus City Prosecutor's Office and the Ohio Ethics Commission.

We also reviewed the post-employment disclosure statement⁸ that Varma filed with the Joint Legislative Ethics Committee ("JLEC") after leaving ODOT. In it, Varma attested that she would not receive income from any entity that was awarded state contracts totaling \$100,000 or more within the two years preceding her employment at ODOT. In fact, she signed a transportation consulting contract in 2007 with Cambridge Systematics Inc., a transportation consulting firm that did nearly \$350,000 in business with ODOT in 2005 and 2006 (\$169,432 in 2005 and \$180,000 in 2006). As a consequence, we are referring this matter to JLEC and the Ohio Ethics Commission.

Proctor currently has a \$300,000 consulting contract with the Transportation Research Board to perform a national freight-transportation study. Both Varma and Cambridge are subcontractors on the project. In his contract proposal, Proctor asserted that his "fact-based and customer-focused style of management led to the Ohio DOT receiving the coveted Tier IV award from the Ohio Partnership for Excellence." While it is true that one of ODOT's 12 district offices won such an award, the Tier IV notice is the agency-wide award that Proctor sought and failed to obtain when he commissioned the ill-fated Employee Satisfaction Survey.

V. OTHER ISSUES

While reviewing records pertaining to Varma's employment, we received an allegation that Varma had collected state unemployment compensation benefits while working for Cambridge Systematics.

⁸ See "Post Employment Disclosures Filed 2005-Present" at <http://www.jlec-olig.state.oh.us/>

Following her dismissal by ODOT, Varma filed for unemployment compensation and began collecting benefits of \$355 a week, effective April 24, 2007. She continued to collect benefits, continuously, until June 16, 2007.

Bank records obtained by OIG under subpoena show that Varma cashed a Cambridge check, dated April 27, 2007, for \$8,950. She also cashed a second Cambridge check, dated June 22, 2007, for \$11,300 and made payable to “Ra-Lux Corporation ATTN: Shobna Varma.” Varma is the president and CEO of Ra-Lux, which was incorporated in Ohio on May 1, 2007.

Varma insisted to us that an unidentified state unemployment compensation specialist told her by phone that she could continue to collect unemployment as long as her business income was “secondary income” and not her “primary source of income.” We determined that there is no such provision.

Following the interview, Varma’s attorney submitted records to OIG indicating that Varma signed a consulting agreement with Cambridge on March 9, 2007. The agreement, beginning March 10, 2007, and ending April 30, 2007, required Varma to write a “white paper” on business strategies Cambridge might pursue to help improve IT operations at state transportation agencies. The agreement indicates that Varma was to be compensated at a rate of \$200 an hour with no ceiling.

Billing records provided to us by Varma’s attorney were incomplete and so we have referred this matter to the Ohio Department of Job & Family Services’ Benefit Payment Control Section for further investigation.

We also investigated several other allegations of wrongdoing that we determined to be either unfounded or unverifiable. They include claims that Varma steered business to DLZ, a major ODOT vendor that employed her husband; that Varma authorized the payment of a finder’s fee to an ODOT vendor for assisting in the hire of an assistant IT director; that Varma was involved in a real estate venture with an IT consultant whom

she had hired; and that Varma was treated unprofessionally by ODOT personnel on the day she was fired. We found no evidence to support any of these allegations, nor were we able to verify several other minor claims of wrongdoing.

VI. CONCLUSION

As the director of ODOT, Proctor had the authority to choose his own IT director and to essentially run the agency as he saw fit. In that vein, we do not quarrel with his decision to choose Varma over Rutherford, nor do we fail to acknowledge Proctor's many contributions to the improvement of Ohio's transportation system, including bridge and pavement upgrades, the construction of new rest areas and a reduction of ODOT staff from 7,800 employees to about 6,000 employees today.

But the evidence in this case is overwhelming that Proctor consistently displayed favoritism toward Varma, a longtime friend with whom he still works today, after promoting her from bargaining unit systems analyst to Director of Information Technology at one of the state's largest agencies. And in the ensuing years, Proctor overtly and tacitly supported Varma in her many conflicts with ODOT's Human Resources and Finance divisions, as well as in her confrontations with other senior managers.

Varma's firing in January 2007 was celebrated throughout the agency. Varma told us that she recalls seeing ODOT Finance Department employees who appeared to be cheering as she stood outside ODOT's headquarters after being escorted from the building. Former Chief of Staff Bob Campbell went so far as to compare the elation at ODOT that day to "the fall of Communism." A party celebrating Varma's firing was held that evening at a popular Columbus brewery.

While these actions are regrettable, the enmity toward Varma was nurtured by what was widely perceived at ODOT as Proctor's unwavering loyalty to Varma in her frequent

disputes with colleagues. Some left the agency after clashing with her and getting no support from Proctor; others who ran afoul of Varma simply saw their relationships with Proctor sour and their influence with the director wane.

Both Proctor and Varma denied during our interviews that Varma was accorded any special status or privileges, saying they were wholly fixated on attaining organizational excellence. Varma repeatedly told us that she was unaware of her colleagues' hostility and was simply focused on delivering "solutions" for ODOT.

Proctor's actions indicate otherwise. The evidence shows that he ignored the work of two selection committees by selecting Varma over higher-rated candidates; disregarded recommendations and legal advice pertaining to her pay grade and employment status; recalled an Employee Satisfaction Survey after discovering that it contained embarrassing comments about himself and Varma; and then risked his reputation by attending a State Personnel Board of Review hearing on Varma's behalf in apparent violation of Ohio's Revolving Door statute.

VII. RECOMMENDATIONS

Due to the fact that both Proctor and Varma have left ODOT and all of the allegations addressed in this report pertain to the previous administration, we are making no recommendations to the current administration.

EXHIBITS

EXHIBIT A

	Long	Bumgardner	Ickert	Kraner	Puckett	Ruckel	Rutherford	Spagnola	Hausman	Varma	Young
Leadership	No	No	Yes	Yes	No	No	Yes	No	Yes	No	No
IT Quals	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
Mgmt. Exp.	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Org. Skills	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes	Yes	No
Comm Skills	Yes	No	Yes	Yes	No	Yes	Yes	No	No	No	No
Vision	No	No	Yes	No	No	Yes	No	No	No	No	No
Team Work	No	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No
Customer Focus	No	No	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No
ODOT's Core Mission	No	Yes(?)	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No
Mgmt. Style	No	No	No	Yes	No	No	Yes	No	Yes	Yes	No
	3-7	3-7	8-2	9-1	6-4	7-3	9-1	3-7	6-4	6-4	2-8

Kraner, Rutherford, Ickert

	Long	Bumgardner	Ickert	Kramer	Puckett	Ruckel	Rutherford	Spagnou a	Hausma n	Varma	Young
Leadership	No	No	Yes	Yes	No	No	Yes	No	Yes	No	No
IT Qualls	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
Mgmt. Exp.	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Org. Skills	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes	Yes	No
Comm Skills	Yes	No	Yes	Yes	No	Yes	Yes	No	No	No	No
Vision	No	No	Yes	No	No	Yes	No	No	No	Yes	No
Team Work	No	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No
Customer Focus	No	No	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No
ODO's Core Mission	No	Yes(?)	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No
Mgmt. Style	No	No	No	Yes	No	No	Yes	No	Yes	Yes	No
	3-7	3-7	8-2	9-1	6-4	7-3	9-1	3-7	6-4	7-3	2-8

EXHIBIT B

4-17-00

EXHIBIT C

Verbal B.S.

PERSONNEL ACTION
STATE OF OHIO

AGENCY DIVISION OR INSTITUTION UNIT OR OFFICE NO.
TRANSPORTATION-C.O. 241-APPLICATION SER 77000510
FROM FROM
TO 240-INFORMATION TECH.

NAME FROM VARMA SHOBHANA SEX F DATE OF BIRTH MO 05 DAY 28 YR 59 NO. OF YEARS 18 EDUCATION DEGREE MA MAJOR CIS

ADDRESS FROM (STREET) (CITY) (STATE) (ZIP CODE) (COUNTY)

EFFECTIVE DATE FROM: 07 02 00 PAYROLL NUMBER 770-000 POSITION CONTROL NO. 49423.0 BARG UNIT 14 FLAG 9 SOCIAL SECURITY NUMBER HO. COUNTY FRAN

CLASS TITLE FROM: SYS ANAL 1 CLASS NO. 64121 RANGE 34 STEP 8 BASE RATE 29.75 LONGS .74 SUPPL. 0.00 SUPPL. 0.00 TOTAL 30.49 STATUS C
DATA SYSTEM ADM 64133 18 1 33.26 1.16 0.00 0.00 34.42 P

APPOINTMENT CHANGE SEPARATION INTERRUPTION
0 EMERGENCY ENDS
1 FULL TIME PERMANENT ENDS
2 FULL TIME TEMPORARY ENDS
3 FULL TIME SEASONAL ENDS
4 PART TIME PERMANENT ENDS
5 PART TIME TEMPORARY ENDS
6 PART TIME SEASONAL ENDS
7 INTERMITTENT ENDS
8 FIXED TERM SALARIED ENDS
9 FIXED TERM PER DIEM
10 APPT. DATE CORRECTED
11 FULL TIME INTERIM INTERNAL
12 FULL TIME INTERIM EXTERNAL
13 PART TIME INTERIM INTERNAL
14 PART TIME INTERIM EXTERNAL
15 UNIT 11,12 FULL TIME INTERIM
16 ESTABLISHED TERM REGULAR
17 ESTABLISHED TERM IRREGULAR
18 UNIT 11,12 PART TIME INTERIM
19 FULL TIME DISASTER RELIEF
20 PART TIME DISASTER RELIEF
1 PROMOTION
2 DEMOTION
3 LATERAL CLASS CHANGE
4 TRANSFER WITHIN AGENCY
5 TRANSFER BETWEEN AGENCIES
6 CIVIL SERVICE STATUS
7 NAME
8 APPOINTMENT CHANGE TO
9 DISPLACEMENT
10 RATE
11 REASSIGNMENT
12 POSITION CHANGED
13 TEMPORARY WORK LEVEL
14 TEMP REASSIGN BY APPEAL DECISION
15 CANCEL INTERIM
16 SERVICE CHANGE
17 SSN CORRECTION
18 GRIEVANCE ADJUSTMENT
19 H.Q. COUNTY CHANGE
20 OTHER - SEE REMARKS
1 RESIGNED - REGULAR WRITTEN ORAL
2 RETIRED
3 DISABILITY RETIREMENT
4 DECEASED
5 REMOVED
6 PROBATIONARY REMOVAL
7 LAID OFF
8 UNCLASSIFIED TERMINATION
9 OTHER (SEE REMARKS)
10 CANCEL APPOINTMENT
11 DISABILITY SEPARATION
12 REINSTATE BY
13 INTERIM SEPARATION
14 RESIGNED - NOT IN GOOD STANDING
15 RESIGNED - NOT RECOMMENDED FOR REHIRE
1 MILITARY LV. ENDS
2 PERSONAL LV. ENDS
3 SUSPENSION ENDS
4 SEASONAL ENDS
5 EDUC. LEAVE ENDS
6 UNION LEAVE ENDS
7 END A17
8 END A18
9 VAC. LV. DEBIT ENDS
10 PENALTY FINE ENDS
11 WRKING. SUSP. ENDS
1 FROM SEPARATION
2 FROM INTERRUPTION
3 BY PERSONAL BD. OF REVIEW
4 BY COURT ORDER
5 SEPARATION RESCINDED
6 BY GRIEVANCE
7 BY ARBITRATION AWARD
8 REEMPLOYMENT FROM LAYOFF
9 APPT. TYPE
10 RECALL FROM LAYOFF
11 APPT. TYPE

DATE OF LAST PROMOTION 03/29/98 CERTIFICATION NO. DATE OF CONTINUOUS SERVICE 08/31/92 BUDGETED HOURS 2080

REMARKS: Data Systems Admin. designated as Career Professional.
Cert dosen't carry per ORC chapter 124.311

APPROVAL OF APPOINTING AUTHORITY (SIGNATURE) DATE APPROVED DISAPPROVED CERTIFICATION 07/13/00 JUL 12 2000

SIGNATURE OF RELEASING AUTHORITY DATE SIGNATURE OF APPROVER DATE

ODOT PERSONNEL
2000 JUL 12 A 10:58

EXHIBIT D

NO. 77000690

PERSONNEL ACTION STATE OF OHIO

AGENCY: TRANSPORTATION-C.O. DIVISION OR INSTITUTION: 241-APPLICATION SER FROM TO: 240-INFO TECHNOLOGY

NAME FROM: VARMA SHOBHANA (LAST) (FIRST) (M.I.)

SEX: F DATE OF BIRTH: 05/28/59 NO. OF YEARS: 18 EDUCATION DEGREE: MA MAJOR: CIS

ADDRESS FROM: (STREET) (CITY) (STATE) (ZIP CODE) (COUNTY)

EFFECTIVE DATE: FROM: 07/02/00 TO: 07/02/00 PAYROLL NUMBER: 770-000 POSITION CONTROL NO.: 49423.0 BARG UNIT: 14 FLAG: 9 SOCIAL SECURITY NUMBER: NO. COUNTY: FRAN

CLASS NO.	RANGE	STEP	BASE RATE	LONG	SUPL.	SUPL.	TOTAL	STATUS
64121	34	8	29.75	0.74	0.00	0.00	30.49	C
64133	18	5	41.28	1.16	0.00	0.00	42.44	P

FROM: SYS ANAL 1 TO: DATA SYSTEM AD

APPOINTMENT	CHANGE	SEPARATION	INTERRUPTION
<input type="checkbox"/> 0 EMERGENCY ENDS <input type="checkbox"/> 1 FULL TIME PERMANENT ENDS <input type="checkbox"/> 2 FULL TIME TEMPORARY ENDS <input type="checkbox"/> 3 FULL TIME SEASONAL ENDS <input type="checkbox"/> 4 PART TIME PERMANENT ENDS <input type="checkbox"/> 5 PART TIME TEMPORARY ENDS <input type="checkbox"/> 6 PART TIME SEASONAL ENDS <input type="checkbox"/> 7 INTERMITTENT ENDS <input type="checkbox"/> 8 FIXED TERM SALARIED ENDS <input type="checkbox"/> 9 FIXED TERM PER DIEM <input type="checkbox"/> 10 APPT. DATE CORRECTED <input type="checkbox"/> 11 FULL TIME INTERIM INTERNAL <input type="checkbox"/> 12 FULL TIME INTERIM EXTERNAL <input type="checkbox"/> 13 PART TIME INTERIM INTERNAL <input type="checkbox"/> 14 PART TIME INTERIM EXTERNAL <input type="checkbox"/> 16 UNIT 11,12 FULL TIME INTERIM <input type="checkbox"/> 17 ESTABLISHED TERM REGULAR <input type="checkbox"/> 18 ESTABLISHED TERM IRREGULAR <input type="checkbox"/> 19. UNIT 11,12 PART TIME INTERIM <input type="checkbox"/> 20 FULL TIME DISASTER RELIEF <input type="checkbox"/> 21 PART TIME DISASTER RELIEF	<input checked="" type="checkbox"/> 1 PROMOTION <input type="checkbox"/> 2 DEMOTION <input type="checkbox"/> 3 LATERAL CLASS CHANGE <input type="checkbox"/> 4 TRANSFER WITHIN AGENCY <input type="checkbox"/> 5 TRANSFER BETWEEN AGENCIES <input type="checkbox"/> 6 CIVIL SERVICE STATUS <input type="checkbox"/> 7 NAME <input type="checkbox"/> 8 APPOINTMENT CHANGE TO <input type="checkbox"/> 9 DISPLACEMENT <input type="checkbox"/> 10 RATE <input type="checkbox"/> 11 REASSIGNMENT <input checked="" type="checkbox"/> 12 POSITION CHANGED <input type="checkbox"/> 19 TEMPORARY WORK LEVEL ENDS CLASS STEP RATE <input type="checkbox"/> 20 TEMP REASSIGN BY APPEAL DECISION <input type="checkbox"/> 22 CANCEL INTERIM <input type="checkbox"/> 23 SERVICE CHANGE <input type="checkbox"/> 26 SSN CORRECTION <input type="checkbox"/> 27 GRIEVANCE ADJUSTMENT <input type="checkbox"/> 30 H.O. COUNTY CHANGE <input type="checkbox"/> OTHER - SEE REMARKS	<input type="checkbox"/> 1 RESIGNED - REGULAR WRITTEN ORAL <input type="checkbox"/> 2 RETIRED <input type="checkbox"/> 3 DISABILITY RETIREMENT <input type="checkbox"/> 4 DECEASED <input type="checkbox"/> 5 REMOVED <input type="checkbox"/> 6 PROBATIONARY REMOVAL LAID OFF <input checked="" type="checkbox"/> 8 UNCLASSIFIED TERMINATION <input type="checkbox"/> 9 OTHER (SEE REMARKS) <input type="checkbox"/> 10 CANCEL APPOINTMENT <input type="checkbox"/> 12 DISABILITY SEPARATION REINSTATE BY <input type="checkbox"/> 13 INTERIM SEPARATION <input type="checkbox"/> 15 RESIGNED - NOT IN GOOD STANDING <input type="checkbox"/> 16 RESIGNED - NOT RECOMMENDED FOR REHIRE	<input type="checkbox"/> 1 MILITARY LV. ENDS <input type="checkbox"/> 2 PERSONAL LV. ENDS <input type="checkbox"/> 3 SUSPENSION ENDS <input type="checkbox"/> 6 SEASONAL ENDS <input type="checkbox"/> 7 EDUC. LEAVE ENDS <input type="checkbox"/> 11 UNION LEAVE ENDS <input type="checkbox"/> 12 END A17 <input type="checkbox"/> 13 END A18 <input type="checkbox"/> 14 VAC. LV. DEBIT ENDS <input type="checkbox"/> 16 PENALTY FINE ENDS <input type="checkbox"/> 18 WRKING. SUSP. ENDS REINSTATEMENT <input type="checkbox"/> 1 FROM SEPARATION <input type="checkbox"/> 2 FROM INTERRUPTION <input type="checkbox"/> 3 BY PERSONAL BD. OF REVIEW <input type="checkbox"/> 4 BY COURT ORDER <input type="checkbox"/> 5 SEPARATION RESCINDED <input type="checkbox"/> 7 BY GRIEVANCE <input type="checkbox"/> 8 BY ARBITRATION AWARD <input type="checkbox"/> 9 REEMPLOYMENT FROM LAYOFF APPT. TYPE <input type="checkbox"/> 10 RECALL FROM LAYOFF APPT. TYPE

DATE OF LAST PROMOTION: 03/29/98 CERTIFICATION NO. DATE OF CONTINUOUS SERVICE: 08/31/92 BUDGETED HOURS: 2080

REMARKS: To correct PA # 77000510 (see attached) Step 5 Advance Step 6 Data Systems Admin. designated as career professional. Cert does not carry per ORC chapter 124.311

2000 AUG -2 A 10:13
PERSONNEL


ALL ITEMS CONTAINED ON PRE-HIRE FORM HAVE BEEN COMPLETED

APPROVAL OF APPOINTING AUTHORITY (SIGNATURE): *Judon D. ...* DATE: 8-2-00

CERTIFICATION: APPROVED DISAPPROVED


SIGNATURE: *Mark ...* DATE: 8-2-00

Interoffice Memo

To: Gordon Proctor, Lisa Conomy
 From: Anne Fornshell 
 Re: Shobna Varma Inquiry
 Date: 13 August 2002

As a result of our discussion regarding financial disclosure filing requirements for Shobna Varma, a related concern develops with respect to requirements for individuals serving in Deputy Director level positions within agencies. Following is a summary of the history, issues and recommendation for action.

History:

- ▶ Shobna Varma currently serves as Data Systems Administrator, PR18 , Classified PCN 47000.0. Shobna was placed in the position 7/2/00, Advanced to Step 5, designated as a Career Professional Position. Her prior certification did not carry per ORC chapter 124.311.
- ▶ Predecessor, Dave Fuhrman, served as Data Systems Administrator, PR18, Unclassified , PCN47000.0 until his retirement. Fuhrman's position was designated in the Career Professional Service. Dates in unclassified service were 4/31/91 - 7/31/00.
- ▶ All Personnel Actions for employees compensated at \$19.00/hour or higher are reviewed and approved by the governor's office. PA tracker shows no dates verifying Shobna's PA being sent to and approval received from governor's office. The Personnel Action, rather than showing governor's office signature shows "verbal, B.B."
- ▶ Neither Pharm Chem nor the Labor Relations Drug Test Database have reports regarding Drug testing and results, which is normally required for unclassified, deputy director rank employees.
- ▶ ODPS/Taxation have no record of a background check being conducted, which is normally required for unclassified, deputy director rank employees.
- ▶ Mike Bussa, in e-mail correspondence in 2000, followed up on status of position to question why she was placed in the position as provisional because Fuhrman was classified. Response from Administrator Kathy Barber was that per Bob Blair "checked with Gordon, it is to be classified."
- ▶  Because of being the position being classified, Shobna's name never appeared on the Financial Disclosure list for the department- annually, when personnel pulls the list, queries are run to obtain E-2 schedule employees. As a result, since 2000, Shobna has not submitted Financial Disclosures.

Issues:

- ▶ Ohio Ethics Commission requires employees to fill out Financial Disclosure Forms if, in any time during the year they served as “state employees paid according to state pay schedule “C” or “E-2” or “director, assistant director, deputy director, division chief or person of equivalent rank of a state department. Because Shobna is the equivalent rank of a deputy director, she should be completing financial disclosures annually.
- ▶ Per O.R.C. 124 (A) 9: (A)“The unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required by this chapter: (9) The deputies and assistants of state agencies authorized to act for and on behalf of the agency, or holding a fiduciary or administrative relation to that agency...
- ▶ Per O.A.C. 123:1-5-01 (B): Deputies and assistants. Notices from appointing authorities of the appointment of deputies and assistants exempt from the classified service under the provisions of division (A)(9) of section 124.11 of the Revised Code, shall be accompanied by a statement of the provisions of the law under which such deputies and assistants are appointed and a statement of the duties to be assigned to such appointees that shows they are acting for or on behalf of the agency and/or that they are performing duties that demonstrate an administrative and/or fiduciary relation with their agency, as defined below:
 1. Administrative relation - generally means a relationship where an employee has substantial authority to initiate discretionary action and/or in which the agency, board, or commission must rely on the employee’s personal judgment and leadership abilities....
 2. Fiduciary relation - generally means a relationship where the agency, board, or commission reposes a special confidence and trust in the integrity and fidelity of an employee to perform duties which could not be delegated to the average employee with the knowledge of proper procedures...
- ▶ ORC 5501.04 states that “The following divisions are hereby established in the department of transportation: ... (E) The division of Information Technology...

The director of transportation shall distribute the duties, powers, and functions of the department among the division of the department.

Each division shall be headed by a deputy director, whose title shall be designated by the director, and shall include those other officers and employees as may be necessary to carry out the work of the division. The director shall appoint the deputy director of each division, who shall be in the unclassified civil service of the state and shall serve at the pleasure of the director...

- ▶ All other departmental deputy directors referenced in ORC 5501.04 are unclassified.

Recommendations:

1. Have Shobna Varma complete and submit Financial Disclosure Forms for 2000 (to the best of her recollection) and 2001. ODOT should pay both filing and late fees. Work with Chief Legal Council and the Ohio Ethics Commission to inform, discuss, and gain agreement on course of action.
2. Complete and file a personnel action to place Shobna in the Unclassified Service. Background check and drug testing should be completed as required for unclassified employees.
3. Beginning with Fiscal Year 2002 Financial Disclosure Reporting, the Deputy Director of Human Resources and Chief Legal Council should meet to review the list of those employees required to comply with the Ethics Commission's reporting requirement.

Please advise if you are in agreement with the recommendations so we can proceed.

/acf

Interoffice Memo

To: Tom McPherson, Assistant Director for Business Management
Anne Fornshell, Deputy Director for Human Resources
Lisa Conomy, Chief Legal Counsel

From: Gordon Proctor, Director *Gordon*

Re: Shobna Varma Inquiry

Date: August 14, 2002

I have received and reviewed Anne Fornshell's interoffice memorandum of August 13, 2002. It prompts me to provide background that apparently - and inexplicably - is lacking in the files of the Human Resources division.

At the time of Ms. Varma's selection as Deputy Director of Information Technology I was insistent that a major change in direction regarding application development be made in DoIT. As the former head of planning, I was very dissatisfied at the slow pace and lack of guidance that DoIT provided in the development of complex new applications. The list of uncompleted and stalled applications is long - Request for Leave, overweight truck routing, Project Development Management System replacement, Project Accounting Systems and others. My personal experience in working with Technical Services and Highway Operations was those offices preferred to develop their own applications because of a lack of confidence in DoIT's ability to deliver applications.

As recently as this year, the Applications Development Office of DoIT received the lowest evaluation of any office during our 360 degree peer evaluations. In other words, the other offices rated it lowest of all Central Office offices in terms of the service it provided them. If one compares our rate of highway project delivery - which is 93 percent - against our rate of major application delivery - which has been until ELIS zero - it is clear this unit was not functioning to the same level of other ODOT units.

The search committee organized to select a replacement to former Deputy Director David Fuhrman was appointed without my input or guidance. It was appointed and given a schedule to recommend a new deputy director without benefit of the direction I wanted DoIT to move. When it completed its work and recommended Joe Rutherford to head DoIT I was very disappointed. Mr. Rutherford is a fine person and was a good county manager. He had no depth, however, to his technical experience and lacked both the academic background and operational experience to take control of the highly complex tasks of developing new, department-wide computer applications. Both Mr. Fuhrman and former Applications Office Administrator John Lavkulich

were generalists who lacked the technical skills and the highly detailed process management skills to keep major projects on track. I did not want a continuation of past performance.

When Mr. Rutherford was recommended I did not see him possessing the technical training or project-management background that I believed was necessary. I did not accept the search committee's recommendation and instead selected Ms. Varma. I selected her because my personal experience working with her on the project selection and district allocation process showed her to be highly organized. She routinely used critical path planning tools and kept abreast of all milestones. She is highly goal-oriented and drives herself and team members to completion of tasks. She has a master's degree in information sciences with a specialization in the development of new applications. She has an under graduate degree in chemical engineering and had been in the management training program for Shell Oil while in India. In other words, she possessed exemplary academic and managerial background that made her particularly suited to managing application development.

To me, there was no comparison in qualities of the candidates and to me the choice was very clear.

At that point, the Division of Human Resources was tasked with performing the steps necessary to fulfill her appointment. Bob Blair asked me whether she was to be classified or unclassified. I responded that I wanted her in the same position that Mr. Fuhrman occupied because it was my understanding that was the position being filled.

Why he or the Division of Human Resources did not have a background check or drug test done, I cannot say. I left the processing of the paper work with the Division to be handled in the normal way.

I do believe the appointment was cleared by the Governor's office. At some point in the process I spoke to Chief of Staff Brian Hicks about the pending appointment and he said it was backed up on his desk and he had yet to get to it. Later, I was informed that he had provided the routine approval. To the best of my understanding, Human Resources handled the paper work as it would with any comparable position.

I repeat my verbal instructions to Lisa Conomy and Anne Fornshell to review Human Resources lists of ODOT personnel who should be filing financial disclosure documents. Ensure that the list is inclusive so that Ms. Varma or other personnel who may need to file are informed that they should do so. Please have this completed by Friday August 23. Then advise me as to the steps we should take to ensure complete compliance.

I concur with recommendations 1 and 3 of Anne Fornshel's August 13, 2002 memorandum. I wish to discuss with Ms. Varma the second point to clarify her understanding of the terms and conditions of the position she accepted. I also want to understand how similar positions are handled in other agencies.

c S. Varma - File.

EXHIBIT G

Lisa Conomy
08/07/02 03:55 PM

To: Anne Fornshell/HumanRes/CEN/ODOT@ODOT
cc:
Subject: Fiduciary can't be classified

Anne:

Here it is. It could not possibly be more straight forward.

R.C. 124(A)(9)

(A) The unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required by this chapter:
(9) The deputies and assistants of state agencies authorized to act for and on behalf of the agency, or holding a fiduciary or administrative relation to that agency and those persons employed by and directly responsible to elected county officials or a county administrator and holding a fiduciary or administrative relationship to such elected county officials or county administrator, and the employees of such county officials whose fitness would be impracticable to determine by competitive examination, provided that division (A)(9) of this section shall not affect those persons in county employment in the classified service as of September 19, 1961. Nothing in division (A)(9) of this section applies to any position in a county department of job and family services created pursuant to Chapter 329. of the Revised Code.

Also applicable is O.A.C. 123:1-5-01:

(B) Deputies and assistants. Notices from appointing authorities of the appointment of deputies and assistants exempt from the classified service under the provisions of division (A)(9) of section 124.11 of the Revised Code, shall be accompanied by a statement of the provisions of the law under which such deputies and assistants are appointed and a statement of the duties to be assigned to such appointees that shows they are acting for or on behalf of the agency and/or that they are performing duties that demonstrate an administrative and/or fiduciary relation with their agency, as defined below:

(1) Administrative relation – Generally means a relationship where an employee has substantial authority to initiate discretionary action and/or in which the agency, board, or commission must rely on the employee's personal judgment and leadership abilities. It is characterized by a position where the employee is in charge of formulating official policy or is in charge of carrying out that policy. The average employee would not possess such qualities or be delegated such discretionary authority.

(2) Fiduciary relation – Generally means a relationship where the agency, board, or commission reposes a special confidence and trust in the integrity and fidelity of an employee to perform duties which could not be delegated to the average employee with the knowledge of proper procedures. It is characterized by qualities and personal attributes beyond technical competence that cannot be satisfactorily measured by competitive examination.

Let me know if you need more.

Lisa J. Conomy, Chief Legal Counsel
Ohio Department of Transportation
lisa.conomy@dot.state.oh.us
phone (614)466-3664
fax (614)644-6053

EXHIBIT H

Julie Ray/BusinessMgmt/CEN/ODOT

To Chris Dietsch/Quality/CEN/ODOT@ODOT
cc
Subject Re: Employee Satisfaction Survey - PLEASE READ IMMEDIATELY [Link](#)

03/15/2006 06:34 PM

Are you wanting to remove the comments :))

Julie Ray
Deputy Director
Finance and Forecasting
julie.ray@dot.state.oh.us
1-614-466-2687

Chris Dietsch/Quality/CEN/ODOT

To DOT.DDD, DOT.CODD
cc Andrew Gall/Director/CEN/ODOT@ODOT, Gordon
Proctor/Director/CEN/ODOT@ODOT, Lisa
Conomy/ChiefLegal/CEN/ODOT@ODOT
Subject Employee Satisfaction Survey - PLEASE READ IMMEDIATELY

03/15/2006 05:23 PM

The ESS survey that was provided to each of you in attendance this morning at the Executive Management Meeting has been found to have had an error of significant proportion and as such needs to be returned ASAP to the Office of Quality and Human Resources (to my attention). All copies must be returned to C.O. by tomorrow (3/16/06). **Do not make copies** of anything nor share the information contained therein with any one at this juncture until the corrections can be made. I apologize for the inconvenience but will attempt to get the corrected copies back out to you in the shortest amount of time.



----- Forwarded by Chris Dietsch/Quality/CEN/ODOT on 04/26/2007 04:13 PM -----

Chris Dietsch/Quality/CEN/ODOT

To Andrew Gall/Director/CEN/ODOT
cc
Subject #'s

03/15/2006 07:02 PM

20 for C.O. - 9 distributed
22 for Districts - 11 distributed

Balance in our office



7/31/2007