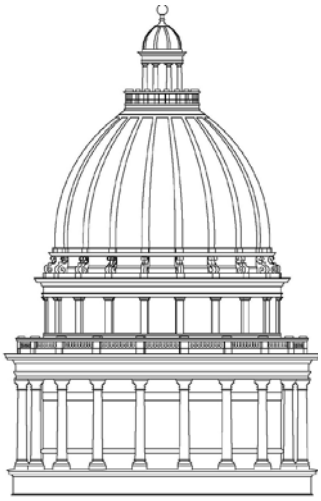
REPORT TO THE

UTAH LEGISLATURE

Number 2017-06



A Performance Audit of Statewide Investigative Functions

August 2017

Office of the
LEGISLATIVE AUDITOR GENERAL
State of Utah

STATE OF UTAH

Office of the Legislative Auditor General

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JOHN M. SCHAFF, CIA
AUDITOR GENERAL

August 22, 2017

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Performance Audit of Statewide Investigative Functions** (Report #2017-06). A digest is found on the blue pages located at the front of the report. The objectives and scope of the audit are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

John M. Schaff, CIA
Auditor General

JMS/lm

Digest of
A Performance Audit of
Statewide Investigative Functions

Certain criminal investigations in Utah require statewide investigative authority to, for example, collaborate across jurisdictional lines, target statewide problems, and provide support to local law enforcement. In recent years, disagreements over programs and funding have led some legislators and state personnel to question the roles and functions of those responsible for statewide investigations in Utah. This audit was requested to provide information in response to these questions.

Chapter II
Poor Records Management
Makes It Impractical to Determine
Efficiency and Effectiveness

SBI Time Logs Fail to Show A True Picture of Operations. Inconsistencies and errors in SBI time log records severely limited our ability to measure the efficiency and effectiveness of SBI operations. Because of a burdensome activity code-based logging system and inadequate case number tracking, an accurate picture of SBI operations would be difficult to produce. These problems are even more complex when dealing with SBI's numerous task force cases because it is not clear how these externally managed cases should be treated within SBI.

AG Investigations Can Also Improve Elements of Case Tracking. The SECURE Strike Force did not report to the Legislature as required by law. In addition, the Special Investigations Unit (SIU) of AG Investigations inconsistently tracks case progress in two different systems which could create a situation in which cases are inadequately tracked or overlooked altogether. We also found that the SECURE Strike Force uses a confusing case numbering system which could make cases difficult to track. AG Investigations should ensure that cases are accurately and consistently managed.

Chapter III
Actual Overlap in
Investigations is Minimal

Case Reviews Found a Small Overlap in Investigative Areas. A review of hundreds of cases in both agencies found that, despite an appearance of overlap in investigative areas and case referral sources, the investigations conducted by SBI and AG Investigations in 2016 did not appear to be in conflict. Based on this finding, it appears that there is currently no significant duplication of effort between the two investigative offices.

Operations Should Be Improved Through Better Collaboration. During our audit work, we observed a tension which exists between DPS and OAG regarding statewide investigations. Because our case review found no clear functional conflict between the investigative offices, it appears that the tension instead stems from personal disagreements. In contrast to the relationship between the two agencies, we observed that DPS and OAG maintain a high degree of coordination and cooperation with various other entities such as the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), Social Security Administration (SSA), Immigration and Customs Enforcement (ICE), Unified Police Department (UPD), and other Utah law enforcement agencies. Ultimately, it is the responsibility of the leadership of each office to find ways to communicate openly and improve operations where needed.

Chapter IV
Utah's Statewide Investigative Structure Largely Parallels Peer Practices

Utah's Investigative Structure Appears Similar to That Found in Other States. We contacted several surrounding states to inquire about their statewide investigative structure. Specifically, we looked at the investigative offices of the attorney general and department of public safety in Arizona, Colorado, Idaho, Nevada, New Mexico, and Oregon. We looked at state statute and agency websites, and we discussed programs, investigative focus, and the relationship between the two agencies within each state. There were no findings to suggest that changes in structure or investigative focus are necessary in either Utah office at this time.

Despite Concerns, OAG Investigations Model is Appropriate. In recent years, including during this audit, stakeholders have expressed concerns regarding the potential for a conflict of interest in the OAG Criminal Department because investigators and prosecutors are both employed by the same agency. However, a review of prosecution standards from the American Bar Association (ABA) and the National District Attorneys Association (NDAA) found that the model employed by the OAG is acceptable.

Legal Language Regarding OAG Authority to Investigate Could be Clarified. The intent of the statutory language which grants peace officer authority to AG Investigations and other state agencies is not as clear as it could be. Based on the same statutory language that empowers AG Investigations, it appears that statewide full-spectrum peace officer authority extends to other state agencies like the Fraud Division of the Department of Insurance or peace officers working for the Department of Natural Resources. The Legislature should therefore consider examining statutory language which describes and defines peace officer authority to determine if it matches legislative intent and whether it should be clarified.

REPORT TO THE
UTAH LEGISLATURE

Report No. 2017-06

A Performance Audit of Statewide Investigative Functions

August 2017

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Chapter I
Introduction

Certain criminal investigations in Utah require statewide investigative authority to, for example, collaborate across jurisdictional lines, target statewide problems, and provide support to local law enforcement. In recent years, disagreements over programs and funding have led some legislators and state personnel to question the roles and functions of those responsible for statewide investigations in Utah. This audit was requested to provide information in response to these questions.

Disagreements over programs and funding have led to questions about statewide investigations.

Utah Code gives relatively broad, statewide criminal investigation authority to two agencies: 1) the State Bureau of Investigation (SBI) within the Department of Public Safety (DPS), and 2) the Investigations Division (AG Investigations) within the Office of the Utah Attorney General (OAG).[1,2] Investigative operations in both AG Investigations and SBI are staffed with both certified peace officers and non-certified support personnel.

Investigations Overlap Is Minimal Despite Appearance

The intent of this audit is to determine whether Utah's statewide investigative functions are funded, structured, and operating well, relative to best or common practices. To begin, Figure 1.1 summarizes the types of crimes each office is legally mandated to investigate, along with each office's other major responsibilities.

This audit report examines the funding, structure, and operations of SBI and AG Investigations.

[1] For SBI, see ***Utah Code*** 53-10-302. For AG Investigations, see 53-13-103(3)(a), 53-13-103(1)(b)(vii), and Legislative Research and General Counsel's opinion shown in Appendix A.

[2] Criminal investigations are initiated and carried out by many law enforcement and prosecution agencies in Utah. Barring a specific specialization or multi-jurisdiction case, SBI and AG Investigations are just two of the many investigative resources available to citizens, law enforcement, and prosecutors.

Statute mandates several types of crime each office must investigate and lists duties specific to each office.

Figure 1.1 *Utah Code* Provides Specific Investigative Mandates. The sections of statute cited below identify duties or types of crime that should be investigated by each agency.

State Bureau of Investigation *Title 53, Chapter 10, Part 3**	AG Investigations *Title 67, Chapter 5*
Types of Crime	
Suspicious Cash Transactions, Fraud, Money Laundering	Medicaid Fraud
Terrorist/Extremist Groups, Organized Crime, Gangs	Child Pornography and Internet Crimes Against Children**
Highway Drug Interdiction, Drug Crimes	Violent and Major Felony Crime Associated with Illegal Immigration**
Cyber Crime, Network Attacks, Computer-Related Theft or Fraud	Fraudulent Identification Documents**
Public Corruption	Mortgage and Financial Fraud
Alcohol Law Enforcement	Social Security Disability Fraud
Other Duties	
Provide Investigative Resources to DPS and Local Law Enforcement	Provide Investigative Resources to the AG's Office
Maintain a Criminal Intelligence Center to Share Information with State and Law Enforcement Agencies	

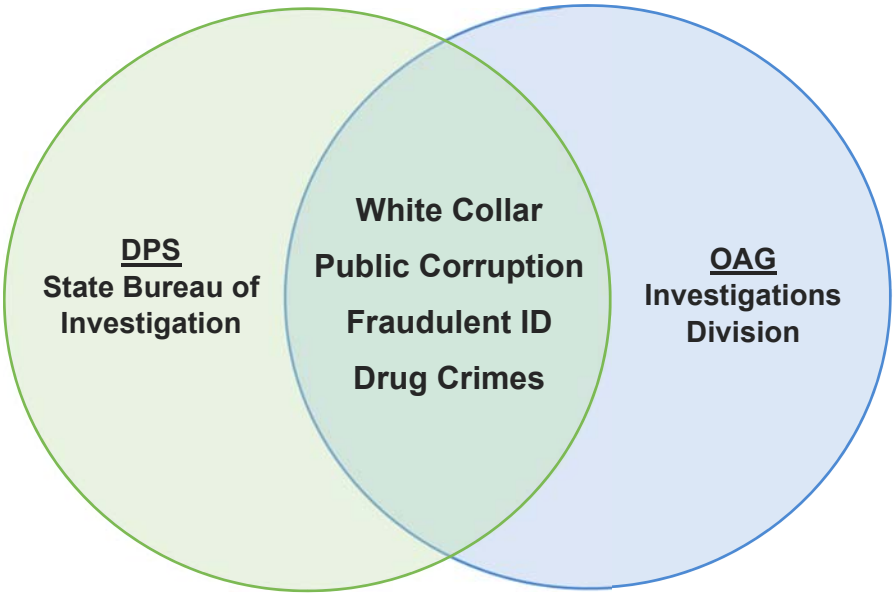
*Source: **Utah Code** as cited in the figure*
** SBI participates on multiple task forces to satisfy its investigative mandates, including Salt Lake Metro Narcotics, Salt Lake Metro Gang, Utah County Major Crimes, Weber/Morgan, Central Utah, Iron/Garfield, SECURE Strike Force, DEA Metro, FBI Cyber Crimes, FBI Safe Streets, FBI Public Corruption, and FBI Joint Terrorism Task Force (JTTF).*
*** AG Investigations administers task forces that coordinate the efforts of several law enforcement agencies to enforce and investigate these types of crimes.*

Figure 1.1 shows the various crimes that both SBI and AG Investigations are legally directed to investigate. It also shows that SBI has been given the responsibility to provide investigative resources to DPS and local law enforcement and to maintain a statewide criminal intelligence center. AG Investigations also works extensively with local law enforcement because of the task forces they administer.

Considering the lists in Figure 1.1, one of the questions of this audit is whether certain crimes are investigated by both offices, thereby creating conflict or needless redundancy. While some crimes are only investigated by one agency, certain crimes appear to be investigated by both offices. For example, the cases investigated by Alcohol Enforcement in SBI or Internet Crimes Against Children (ICAC) in AG Investigations do not conflict with mandates in the

other agency. However, Figure 1.2 shows certain types of investigations that do appear to overlap between SBI and AG Investigations.

Figure 1.2 Some Areas of Investigation Appear to Overlap. However, our case review, discussed in Chapter III, found that the actual conflict or redundancy is very small.



Source: OLAG review of SBI and AG Investigations cases

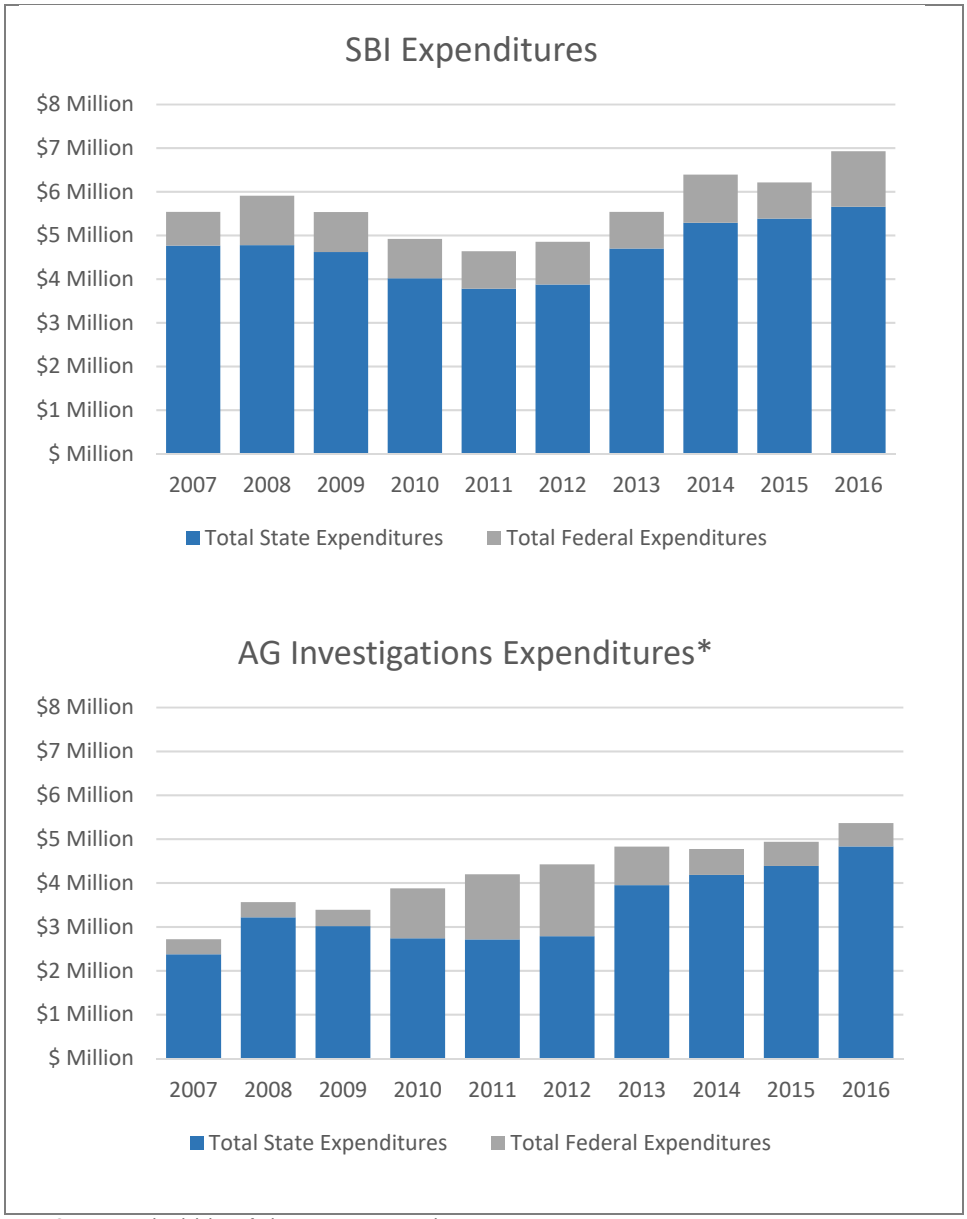
Despite appearances, a case review found that there is very little overlap between SBI and AG Investigations.

Figure 1.2 shows that, by virtue of multiple investigative mandates, both offices investigate cases involving white-collar crime, fraud, and drug crimes. However, we performed a case review which found that each office's investigations in these areas are largely unique and that no significant structural conflict exists. The results of that case review are discussed in Chapter III of this report.

SBI and AG Investigations Operate with Both State and Federal Funding

Figure 1.3 illustrates a simple breakdown of expenditures in each investigative office over the last several years. While both entities saw a similar reduction in state funding during the economic recession around 2009-2012, AG Investigations made greater use of federal dollars to maintain and expand investigative operations.

Figure 1.3 AG Investigations Expenditures Have Grown More Than Those at SBI. Since the pre-recession peak in 2008, AG Investigations expenditures have grown by 51 percent, and SBI expenditures have grown by 17 percent.



Source: Utah Division of Finance—Data Warehouse
** Though Figure 1.1 mentions Medicaid fraud, expenditures from the Medicaid Fraud Control Unit (MFCU) are excluded from this figure because of the unit's uniquely separate investigative function. From 2012-16, that unit spent an annual average of $390,000 in state funding and $1.2 million in federal funding.*

AG Investigations' one-time federal funding was replaced with state funding beginning in 2013.

Figure 1.3 compares how spending in each office has changed over the last several years. Measuring from the pre-recession expenditure peak in fiscal year 2008 to fiscal year 2016, AG Investigations expenditures grew by 51 percent, and SBI expenditures grew by 17 percent. When considering only state funding (the blue portion of the

figure) the amount of expenditure growth is nearly the same (50 percent and 18 percent for AG Investigations and SBI respectively).

The biggest driver of AG Investigations' expenditure growth was one-time federal funds that were used to expand investigation operations through programs like the SECURE Strike Force and the Internet Crimes Against Children (ICAC) Unit. When these funds were discontinued, they were replaced with state appropriations. As shown in Figure 1.3, state appropriations for AG Investigations increased substantially after 2012.

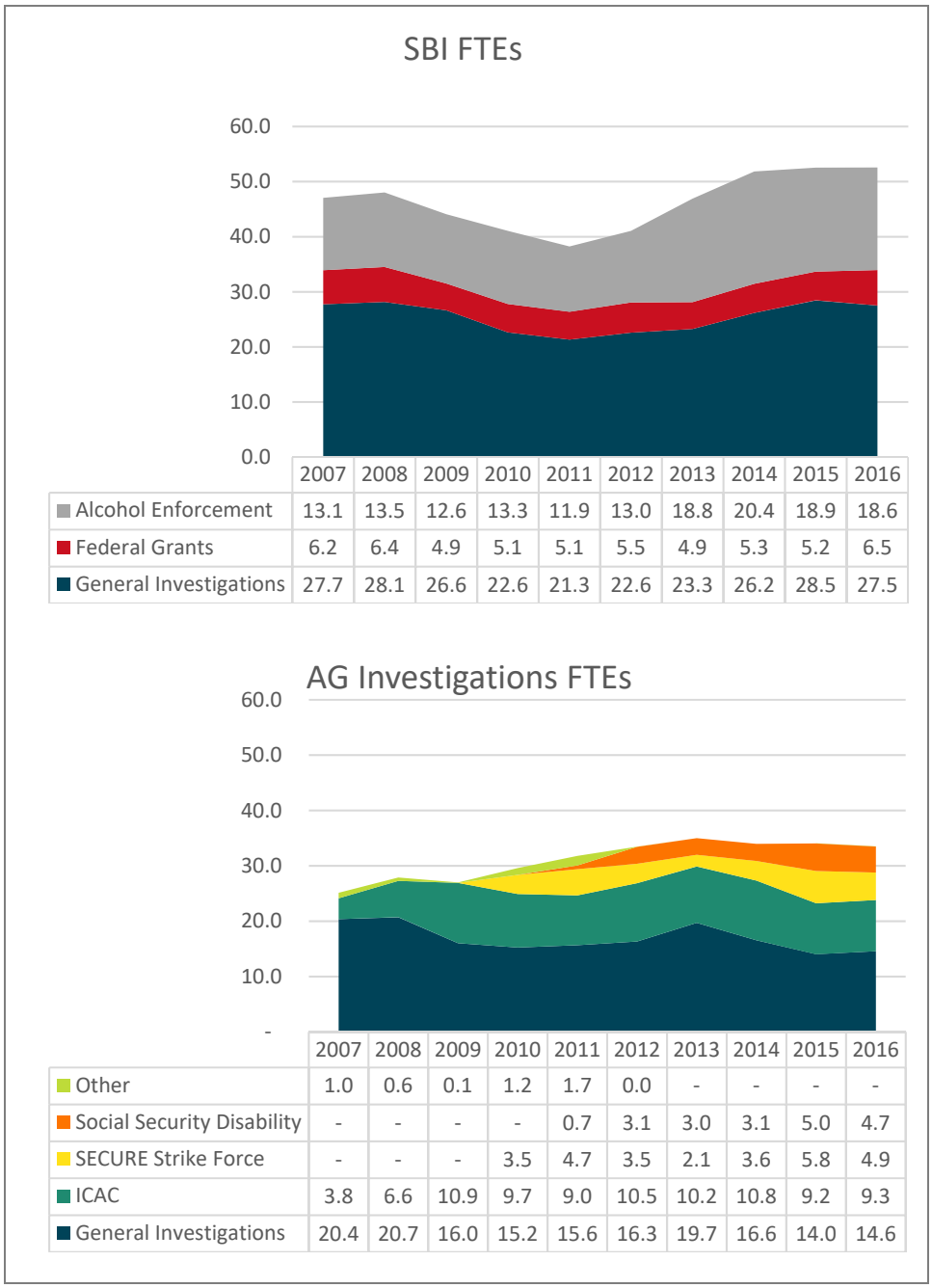
When one-time federal funds for AG Investigations were discontinued, they were replaced with state funds.

Whether the Legislature should increase, decrease, or reallocate funding between these investigative offices does not appear to be contingent on a discussion of best practices, since the legal structure of both offices does not appear to be redundant and already falls within a typical range of practice. Chapters III and IV of this report provide more discussion on those points. Instead, the primary factor that would determine funding shifts would be the policy priorities of the Legislature relative to statewide criminal investigations—namely, the crimes that should be investigated at the state level and a case-by-case determination of which office is better suited to investigate those crimes.

Investigative Personnel for SBI and AG Investigations Differ in Size and Makeup

Figure 1.4 details the changes in FTEs over the last several years for both offices. As with state-funded expenditures, a decrease in state-funded FTEs during the recession years can be clearly seen. Also, further insight is provided into which AG Investigations' programs made use of one-time federal funding.

Figure 1.4 SBI Is Significantly Larger than AG Investigations. However, if alcohol enforcement personnel are excluded, the offices are similarly sized.



	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Alcohol Enforcement	13.1	13.5	12.6	13.3	11.9	13.0	18.8	20.4	18.9	18.6
Federal Grants	6.2	6.4	4.9	5.1	5.1	5.5	4.9	5.3	5.2	6.5
General Investigations	27.7	28.1	26.6	22.6	21.3	22.6	23.3	26.2	28.5	27.5

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Other	1.0	0.6	0.1	1.2	1.7	0.0	-	-	-	-
Social Security Disability	-	-	-	-	0.7	3.1	3.0	3.1	5.0	4.7
SECURE Strike Force	-	-	-	3.5	4.7	3.5	2.1	3.6	5.8	4.9
ICAC	3.8	6.6	10.9	9.7	9.0	10.5	10.2	10.8	9.2	9.3
General Investigations	20.4	20.7	16.0	15.2	15.6	16.3	19.7	16.6	14.0	14.6

Source: Utah Division of Finance: Data Warehouse

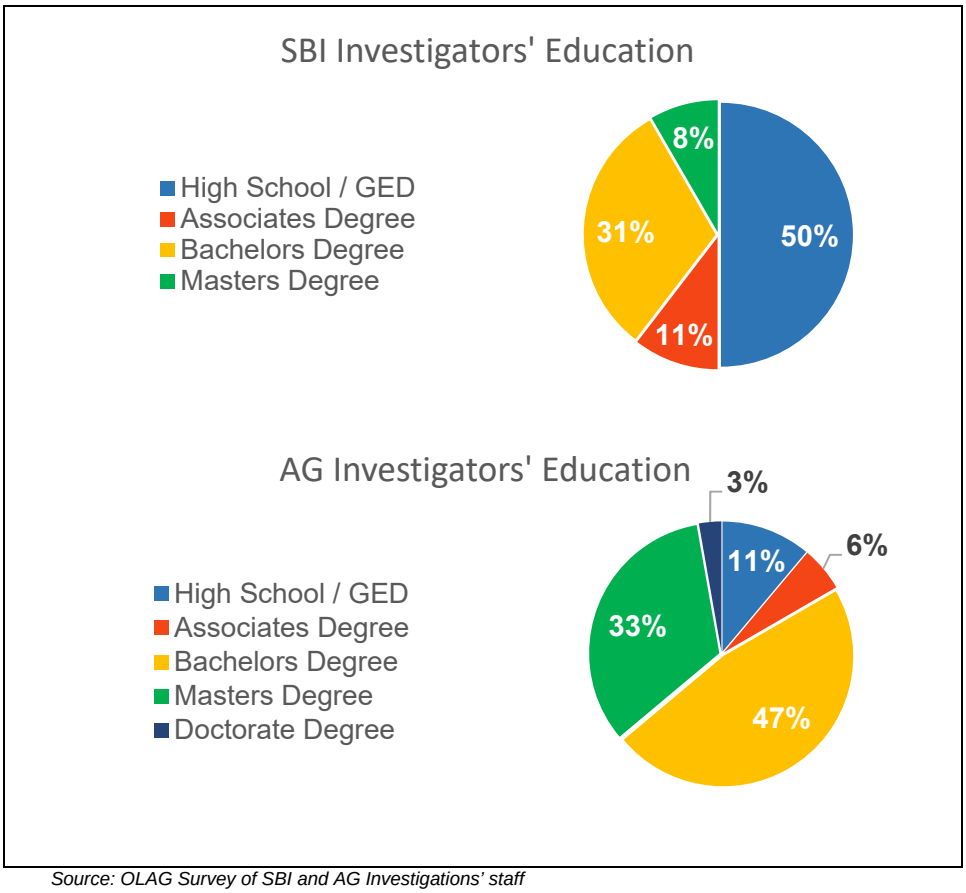
Figure 1.4 shows that AG Investigations' mix of staff and programs diversified beginning around 2009. Though ICAC existed prior to that time, federal funding for ICAC increased in 2009 and then began to be phased out from 2013 onward. Social Security

Disability investigations are operated almost entirely with ongoing federal funding through the Social Security Administration and are not included in our discussion of one-time funding.

In addition to examining raw FTE numbers, we looked at the education, experience, and salary of investigators in each office and found that, on average, investigators in SBI had less experience than those in AG Investigations. We surveyed staff in each office and found that, prior to joining their offices, investigators at SBI had an average of 8.2 years of law enforcement experience, while those in AG Investigations had an average of 15 years of law enforcement experience. This difference in experience is reflected in both the educational background and salaries of both offices. Figure 1.5 shows the educational makeup of each office.

OAG investigators have, on average, more experience and education than SBI investigators.

Figure 1.5 More Investigators at AG Investigations Hold Graduate and Undergraduate Degrees. AG Investigations seeks to hire more experienced investigators.



Source: OLAG Survey of SBI and AG Investigations' staff

Figure 1.5 shows that more agents in AG Investigations hold undergraduate and graduate degrees compared to agents at SBI. Given these higher levels of experience and education, it is not unexpected that OAG investigators earn more on average compared to SBI investigators. Figure 1.6 shows the difference in average salary for investigators in both offices.

Figure 1.6 From 2012-16, Investigators in the OAG Earned 15% More than Investigators at SBI. Experience and education appear to be the largest factors in this difference.

Average Salary 2012-2016	
SBI	AG Investigations
$57,027	$65,406

Source: Utah Division of Finance—Data Warehouse

Figure 1.6 shows that investigators in AG Investigations earned an average of 15 percent more than investigators at SBI. However, because of the gap in experience between these offices, a more relevant comparison would examine employees with similar experience and/or education. A 2016 comparative salary analysis performed by AG Investigations used sergeant-level pay rates for multiple law enforcement agencies as a benchmark. Salary data shows that SBI sergeants earned an average of $66,469 from 2012-16, which places them above the average AG Investigations salary of $65,406 shown in Figure 1.6.

Adjusting for experience, the average difference in pay between SBI and AG Investigations is small.

We asked AG Investigations leadership why they hire more experienced and educated investigators. They reported that they seek investigators with sufficient experience and education to appropriately investigate cases involving complex legal and/or financial issues.

Audit Scope and Objectives

This audit seeks to respond to questions regarding the roles and functions of SBI and AG Investigations. Specifically, this report addresses the following:

- **Chapter II:** Poor records management makes it impractical to determine efficiency and effectiveness.

- **Chapter III:** The overlap between SBI and AG Investigations, is minimal, and better collaboration is needed to improve operations between DPS and OAG.
- **Chapter IV:** Utah's statewide investigative structure largely parallels peer practices.

Chapter II
Poor Records Management Makes It Impractical to Determine Efficiency and Effectiveness

We were asked to compare the efficiency and effectiveness of statewide criminal investigations in the Department of Public Safety's State Bureau of Investigation (SBI) and the Office of the Attorney General's Investigations Division (AG Investigations). Unfortunately, poor records management in both offices limited our ability to analyze and compare the two. Specifically, we observed the following:

Poor records management in both offices limited our ability to analyze and compare the two.

- SBI time logs contain many inconsistencies and errors that lead to an incomplete and inaccurate picture of agency operation.
- AG Investigations did not report SECURE Strike Force information to the Legislature in 2015 and 2016 as required by statute and needs to correct inconsistencies in case records.

Given these limitations, a comparison of the efficiency and effectiveness of investigative work in both offices would have taken an unreasonable amount of work. Therefore, our comparison was primarily limited to the descriptive data shown in Chapter I.

SBI Time Logs Fail to Show A True Picture of Operations

Inconsistencies and errors in SBI time logs severely limited our ability to measure the efficiency and effectiveness of SBI operations. Because of a burdensome code-based logging system and inadequate case number tracking, an accurate picture of SBI operations would be difficult to produce. These problems are even more complex when dealing with SBI's numerous task force cases because it is not clear how these externally managed cases should be treated within SBI.

Poor data quality limited our ability to create an accurate picture of SBI operations.

Errors in SBI Activity Codes and Case Numbers Create Insufficient Operational Data

Standards for public management and internal control[3] emphasize the necessity of quality information to achieve objectives and measure efficiency and effectiveness. We found that SBI staff time logs with associated activity codes and case numbers are the most complete source for SBI operational (i.e., case work) data. However, because neither activity codes nor case numbers have been accurately entered by SBI staff or reviewed for accuracy by SBI administration, the analytical value of this data is limited.

We found no evidence to suggest that SBI is neglecting cases.

In recent years, SBI leadership has attempted to improve its case records by introducing other data-tracking methods. However, these methods have not been very successful. For example, we analyzed a spreadsheet in which SBI staff were expected to track work time by case and category during 2016. This spreadsheet only captured a portion of the total hours worked by SBI staff and is, therefore, of limited value in analyzing SBI operations.

It is important to note that while SBI's time log information is flawed, we found no evidence that investigators are neglecting important case work. SBI leadership relies on personal involvement and face-to-face case updates to oversee operations, which appears to be effective but prevents a complete, year-over-year operational analysis. The best information available shows about 1,600 case numbers logged by SBI investigators in 2016. However, because of the data errors discussed in this chapter, we cannot definitively state how many cases were actually worked during this time.

The use of 181 unique activity codes to describe SBI's work makes analysis extremely difficult.

SBI Does Not Appropriately Use Activity Codes When Tracking Time. When SBI investigators track their work hours, they must choose from 181 activity codes in SBI's time entry system, which makes it difficult to appropriately categorize time. This large number of codes is partially due to the fact that the Utah Highway Patrol maintains its activity codes in the same system.

[3] See United States Government Accountability Office (GAO) *Standards for Internal Control in the Federal Government*: Principle 13; and OLAG *Best Practices for Good Management*: Implementing Good Data Management and Evaluating Means Measuring Performance on pp. 5 and 7 respectively.

In addition to the large number of options, there is a confusing redundancy in the codes themselves. Many activity codes are interchangeable; thus, several codes could accurately be applied for the same activity. As an example, Figure 2.1 shows a small sample of eight SBI activity codes (of the total 181 codes) that could all be applied to general investigator activities.

Figure 2.1 Several SBI Activity Codes Could Apply to the Same Task. Because SBI investigators have redundant options, time is not tracked in a useful way.

Background Investigation	Misdemeanor Other
Criminal Investigation Other	Preliminary Case Assessment
Felony Other	SBI On-Duty
Investigation Time	Special Assignment Other

Source: 2016 SBI time-tracking data

Because the eight codes shown in Figure 2.1 are so broad, SBI investigators are left to choose from ambiguous, nearly equal options when attempting to categorize time logs. Similar redundancies exist among codes for activities such as administrative duties or evidence processing. Without clear guidance, staff select whichever code seems appropriate at the time, and the resulting log records become fragmented among multiple codes in a way that undermines a complete picture of staff activity.

The most used activity code, SBI On-Duty, is overly general.

Not only are general-purpose codes redundant, they are also overused. We found that the most frequently selected code in the 2016 data (19 percent of hours logged) was SBI On-Duty, which could encompass almost anything an investigator does on the job. This code was frequently used, despite time log notes showing that precise activity codes would have been more appropriate.

For example, of the 6,940 time log entries coded as SBI On-Duty in 2016, approximately 170 reference a case number, suggesting that a more specific code would have been appropriate. Eighty-three entries contain notes about preparation for covert underage buy (CUB) operations with alcohol licensees and, therefore, should have been coded as CUB. In that same group of 6,940 time log entries, 4,792 had no notes or case numbers. It is unknown how many of those entries could have been logged under more specific and appropriate codes.

An excess of activity codes leads to time log records that do not reflect actual operations.

An excess of activity codes leads to confusion over how to track time. This results in records that may not reflect actual operations. Without a particular desire or need to measure these activities with such precision, there is no clear value in requiring investigators to select from such a large number of activity codes. SBI has made efforts in 2017 to reduce the number of activity codes that an investigator should use; however, problems persist.

Analysis Is Undermined by Activity Codes That Describe Both Case Types and Actions. Some activity codes describe the type of investigation (e.g., narcotics), while others describe an action taken within the course of an investigation (e.g., evidence shuttled). Thus, if an investigator shuttles evidence from a narcotics case, it is unclear whether he or she should code that time as Narcotics Investigation or as Evidence Shuttled. Records show instances of both codes being used interchangeably in such instances.

Seventy-seven percent of time logged by SBI investigators in 2016 did not have an associated case number.

Analysis Is Undermined by Errors in Case Number Entry. In addition to using activity codes to report their time, investigators can also connect their time worked to a specific case number. They can also choose to leave the case-number field blank, which is a necessary option because some activities, such as administrative duties or training, are not associated with a specific case. However, it appears that investigators are typically leaving the field blank inappropriately. In 2016, no case numbers were recorded for 77 percent of all time logged.

Also, even when case numbers were entered, some were entered incorrectly due to manual typing errors. Such errors can artificially inflate the total count of case numbers and dilute the apparent time spent working on individual cases. These errors also limit the ability to cross-reference time logs with case file documentation when needed.

SBI Participation in Task Forces Further Complicates The Collection of Accurate Time Log Data

It is evident that many task force cases are not recorded in the SBI case records system.

SBI investigates cases in connection with several local and federal task forces, which adds even more complexity to the information collection challenges already discussed. Complications occur because the records for many of these cases are housed within the various task force agencies. In 2016, SBI administration began to direct investigators to generate SBI case numbers for their task force cases to better track SBI's true workload. However, not all task force officers

are compliant with this instruction, as indicated by cases that appear in time logs but not in the SBI case records system. Because of different case numbering schemes and thousands of time logs without case numbers, we do not know how many task force cases have not been appropriately recorded.

Because we do not have confidence that we have an accurate record of SBI's task force cases, our ability to measure SBI activity is limited. This reporting inconsistency could skew the office's operational data depending on how many cases are unreported or not accurately entered. SBI should develop a clear policy for tracking task force cases and ensure that supervisors are enforcing the policy.

Management and control standards state that SBI should keep accurate records of staff activity to measure efficiency and effectiveness. SBI administrators should determine informational needs and goals, reconsider all current efforts to collect information, and create long-term systems and policies that will allow for a consistent measuring of output over time, performance benchmarking, and trend analysis. Investigators should then be trained and held accountable for recording information in a consistent, accurate way. If time logs are the method chosen to collect staff activity data, better measurement will be facilitated through a reduction in the number of activity codes and an emphasis on accuracy.

Accurate analysis will be facilitated through the reduction of activity codes and a greater emphasis on accuracy.

AG Investigations Can Also Improve Elements of Case Tracking

AG Investigations can also make some improvements to case-tracking data. First, we found that the SECURE Strike Force did not report to the Legislature as required by law. The strike force is required to submit an annual report to the Law Enforcement and Criminal Justice Interim Committee[4] and did not do so in 2015 or 2016. The AG's Office stated that the reports were not submitted due to a misunderstanding regarding whether or not the committee wanted the reports. The best records available show that SECURE handles approximately 200-300 cases per year, but additional work is needed to make those numbers more precise. We recommend that AG Investigations resume tracking these numbers and report them as

SECURE should resume tracking case statistics and report them as required by statute.

[4] See ***Utah Code*** 67-5-22.7(6).

required by statute. The AG's Office said they are committed to submit the missing reports and all others going forward.

Our case review also found that the SECURE Strike Force creates many case numbers for different portions of the same case. We did not observe this in other sections of AG Investigations. This practice creates a confusing collection of numbers that an investigator may lose track of over the months it takes to develop a case. AG Investigations should determine whether this practice is detrimental to the ability of agents to track cases. If so, the agency should change the way SECURE cases are numbered.

Minor improvements could improve AG Investigations' case management.

Finally, the Special Investigations Unit (SIU) could also improve its tracking system. The SIU keeps case files in an office-wide records management system, but case progress is usually tracked on a separate spreadsheet. Of the 70 cases initiated by SIU in 2016 that are shown in the records management system, only 43 were reflected on the spreadsheet, and 17 of those did not match the records system. An additional six cases were shown on the spreadsheet but were not found in the records system. By inconsistently using two systems, SIU could have cases that are inadequately tracked or overlooked altogether. AG Investigations should restructure SIU's case-tracking process to avoid any information gaps.

Recommendations

1. We recommend that the State Bureau of Investigations determine information needs and goals and create long-term systems and policies that will allow for a consistent measuring of output over time.

2. We recommend that the State Bureau of Investigations develop a clear policy for how to track task force cases and ensure that supervisors are enforcing that policy.

3. We recommend that the State Bureau of Investigation train staff and ensure that supervisors hold them accountable for consistent, accurate operational data tracking once operational data systems and policies are in place.

4. We recommend that the Office of the Attorney General compile and report SECURE Strike Force activities as required by statute.

5. We recommend that the Office of the Attorney General evaluate current methods of case tracking in its various units to ensure that cases are accurately and consistently managed.

Chapter III
Actual Overlap in Investigations Is Minimal

There are concerns that the Department of Public Safety's State Bureau of Investigation (SBI) and the Office of the Utah Attorney General's Investigations Division (AG Investigations) have overlapping areas of investigative focus.[5] However, our case review found that the actual overlap of investigative areas is very small. We believe that the information presented here can help the leadership of each office find ways to communicate openly and improve operations. Operations would be improved through better collaboration between SBI and AG Investigations.

Case Reviews Found a Small Overlap in Investigative Areas

Our case review found that the actual overlap of investigative areas is very small. Still, operations would be improved through better collaboration.

A review of hundreds of cases in both agencies found that, despite an appearance of overlap in investigative areas and case referral sources, the investigations conducted by SBI and AG Investigations in 2016 did not appear to be in conflict. Based on this finding, it appears that there is currently no significant duplication of effort between the two investigative offices. Specifically, observations from our case review include the following:

- SBI investigates fraudulent document crimes related to Utah Highway Patrol traffic stops, while AG Investigations is mandated to target those who sell and distribute fraudulent identification.

- SBI investigates hundreds of narcotics cases, most of which come through task forces or from the Utah Highway Patrol. AG Investigations investigates far fewer narcotics cases, and they come from confidential informants.

[5] Criminal investigations are initiated and carried out by many law enforcement and prosecution agencies in Utah. Barring a specific specialization or multi-jurisdiction case, SBI and AG Investigations are just two of the many investigative resources available to citizens, police, and prosecutors.

- Although an overlap does exist with cases involving white collar crimes and public corruption, this overlap may strengthen the state's ability to avoid conflicts of interest.

Because of errors in the data, we worked to present the most accurate information possible.

Due to the inconsistencies and errors in case data discussed in Chapter II and the large volume of investigative work conducted by both offices, we limited our review to cases from 2016 within areas of perceived overlap. For this reason, several hundred cases in each office were not captured in our review.[6] Additionally, because of the errors in case data, we worked to review and discuss case files with both offices to present the most accurate information possible. For the sake of clarity, only a sample of our case review is discussed in this report.

Fraudulent Identification Investigations In 2016 Focused on Different Crimes

We found that in 2016 both agencies investigated cases involving the use or possession of fraudulent identification documents. Even though the cases share this common thread, a detailed review of cases found that each agency focuses on different types of fraudulent identification crimes. Figure 3.1 compares both agencies' cases.

[6] Because no concern of conflict or overlap in these areas was apparent, we did not review cases from, for example, AG Investigations' Internet Crimes Against Children (ICAC) and Social Security Disability units or SBI's Alcohol Enforcement or Interdiction units.

Figure 3.1 Each Office Investigates Different Types of Fraudulent Identification Crimes. SBI investigated highway-related cases, while AG Investigations focused on document mills.

2016 Cases			
SBI *Referral Sources*		**AG Investigations** *Referral Sources*	
Use, Possession, Distribution of Fraudulent ID, Credit Cards, Checks, Drugs etc. (38 cases)		**Fraudulent ID Documents (54 cases)**	
Highway Patrol (internal)	89.5%	Confidential Informant	35%
Citizen Complaint	2.6	Federal Agency	22
Federal Agency	2.6	Other Law Enforcement	13
Other Law Enforcement	2.6	State Agency	13
Task Force Related	2.6%	AG's Office (Internal)	11
		Citizen Complaint	4
		DPS / SBI	2%

Source: OLAG review and analysis of SBI and AG Investigations cases and case data

SBI's fraudulent identification cases come primarily from the Utah Highway Patrol.

As the figure shows, the overwhelming majority of SBI's fraudulent identification cases involve a combination of fraudulent identification documents and financial instruments and were the result of the Utah Highway Patrol making traffic stops or responding to accidents. These cases also often involved drugs. The cases came to SBI as a result of its mandate to provide investigative resources to divisions within DPS, including Highway Patrol.[7]

AG Investigations is mandated to target those who sell and distribute fraudulent identification.

By comparison, most of AG Investigations' fraudulent identification cases were generated by informants or were referred for investigation by law enforcement and federal and state agencies affiliated with the SECURE Strike Force. This strike force is specifically mandated to target the entities that sell and distribute fraudulent identification documents[8] and the AG Investigations cases shown in Figure 3.1 reflect that mandate.

Therefore, despite what may outwardly appear to be an overlap in investigation type and referral source, the day-to-day investigative work by each office targets different types of fraudulent identification crimes.

[7] See ***Utah Code*** 53-10-302(1)
[8] See ***Utah Code*** 67-5-22.7(4)

Narcotics Investigations in 2016 Were Not Similar

Narcotics cases have also been cited as a point of conflicting jurisdiction between the two agencies. Therefore, we reviewed the nature of and referral sources for certain narcotics cases in each agency. Figure 3.2 presents a similar comparison as that shown in the previous figure.

Figure 3.2 Different Referral Sources Reflect Differences in the Type of Narcotics Cases. AG Investigations' cases were referred for investigation to the SECURE Strike Force.

2016 Cases			
SBI *Referral Sources by Drug Case Type*		**AG Investigations** *Referral Sources by Drug Case Type*	
Non-Interdiction Narcotics Cases (225 cases)		**Undercover Narcotics Cases* (21 cases)**	
Task Force Related	71.5%	Confidential Informant	76%
Highway Patrol (Internal)	27	SBI**	9.5
Other Law Enforcement	1	Citizen Complaint	9.5
Citizen Complaint	0.5%	AG's Office (Internal)	5%

Source: OLAG review and analysis of SBI and AG Investigations cases and case data
** Four of these cases are also included in the fraudulent ID cases shown in Figure 3.1.*
*** These were referred through the two SBI agents who work on the SECURE Strike Force.*

SBI investigates a significantly higher number of narcotics cases.

Figure 3.2 shows that SBI handles a high volume of narcotics cases. In addition to the 225 non-interdiction cases, there were 316 interdiction cases also involving narcotics.[9] The figure also shows that the majority of SBI's non-interdiction narcotics cases came to SBI through the agency's participation on several local and federal task forces.[10] SBI participates in these task forces to gather and share intelligence and to satisfy its broad investigative mandates with limited personnel resources. Also, like the cases shown in Figure 3.1, a

[9] Narcotics interdiction is the disruption of the flow of illicit drugs being transferred through the state on highways. These cases were deemed to be sufficiently unique to SBI. Therefore, there were excluded from the comparison in Figure 3.2. Due to the SBI data errors outlined in Chapter II, some of these non-interdiction cases likely should have been logged as interdiction cases.

[10] These include the Drug Enforcement Administration Metro Narcotics, SECURE Strike Force, Salt Lake Metro Gang Unit, Utah County Major Crimes, and Iron/Garfield Task Forces. See Chapter I, Figure 1.1 for a complete list.

significant portion of SBI's narcotics cases in Figure 3.2 came from the Utah Highway Patrol.

AG Investigations' narcotics cases are far fewer in number than the SBI cases and, like its fraudulent document cases, are referred to the SECURE Strike Force. In fact, 4 of the 21 cases in Figure 3.2 were part of investigations into persons selling both fraudulent ID documents and narcotics. Given the specific mandate of the SECURE Strike Force to target major crime associated with illegal immigration and human trafficking,[11] it is certainly possible for the two offices to lay claim to the same narcotics cases. However, based on the 2016 cases we reviewed, this appears to be a very rare occurrence.

Most OAG narcotics cases are referred because of the SECURE Strike Force mandate.

White Collar Crime and Public Corruption Investigations Appear to Overlap in a Complementary Way

One final example highlights an area in which an overlapping jurisdiction appears to exist. Figure 3.3 shows a similarity in both case types and referral sources for white collar crime investigations in 2016.

Figure 3.3 White Collar / Public Corruption Cases Are Very Similar. Given the nature of these cases, there may be an advantage in having multiple agencies with statewide jurisdiction.

2016 Cases			
SBI *Referral Sources*		**AG Investigations** *Referral Sources*	
White Collar / Public Corruption (Embezzlement, Tax Fraud, Bank Fraud, etc.) (33 cases)		**White Collar / Public Corruption (Embezzlement, Forgery, Wire Fraud, etc.) (33 cases)**	
FBI Task Force Related	55%	Citizen Complaint	33%
Citizen Complaint	18	State Agency	21
Other Law Enforcement	12	Other Law Enforcement	21
AG's Office related	12	AG's Office (Internal)	9
State Agency	3%	Local Prosecutor's Office	9
		Other*	6%

Source: OLAG review and analysis of SBI and AG cases and case data
** Includes one case referred from a private investigator and one from the Davis County Auditor*

Figure 3.3 shows that, for white collar crime, both offices investigate similar cases and serve somewhat similar referral sources.

[11] See ***Utah Code*** 67-5-22.7(1).

Although redundancy may seem needless or wasteful, this is one instance in which it may strengthen the state's ability to handle cases.

The overlap between the two agencies in white collar crime cases can be beneficial.

Of the 33 white collar cases investigated by SBI in 2016 (see Figure 3.3), one case was referred from AG Investigations due to conflicts of interest (a common occurrence in law enforcement agencies), one was jointly investigated with AG Investigations, and another was related to an AG Investigations case. SBI provided similar support in the investigation of three cases involving public corruption allegations against former Utah attorneys general because AG Investigations rightfully recused itself from handling the cases. These 66 cases, six of which were mutually referred or investigated, represent only a small portion of the overall workload relative to the thousands of cases investigated by these offices each year.

The majority of SBI and OAG cases are different in focus and referral source.

In summary, our case review of potentially conflicting areas of investigative focus between SBI and AG Investigations found that cases are so different in terms of the areas of the investigative focus and the referral sources that the actual overlap is small. Overlap does exist in white collar and public corruption investigations, but it appears to represent a complementary use of investigative authority. Because of the results of our case review, along with our comparison of Utah's legal structure with other states (discussed in Chapter IV), we believe the current makeup of statewide criminal investigations is satisfactory and does not need modification. However, if the Legislature were to change its policy goals regarding the types of crimes that should be investigated by these agencies, modifications may be needed.

Operations Should Be Improved Through Better Collaboration

During our audit work, we observed a tension that exists between DPS and OAG regarding statewide investigations. We hope the information in this report will serve to dispel mistaken opinions and foster better collaboration between the two offices. Because our case review found no clear functional conflict between the investigative offices, it appears that the tension instead stems from personal disagreements. Over the last several years, a handful of bills in the Legislature creating or seeking to create new investigative mandates in each office led to differences of opinion among DPS and OAG

personnel. In a committee meeting during the 2016 General Legislative Session, one legislator referred to the current situation as a disagreement over turf between the agencies.

In contrast to the relationship between the two agencies, we observed that DPS and OAG maintain a high degree of coordination and cooperation with various other entities such as the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), Social Security Administration (SSA), Immigration and Customs Enforcement (ICE), Unified Police Department (UPD), and other Utah law enforcement agencies. Ultimately, it is the responsibility of the leadership of each office to find ways to communicate openly and improve operations where needed.

The relationship between OAG and DPS could be improved through better collaboration within the SECURE Strike Force, in which both agencies participate.

A specific opportunity to improve exists where the two agencies interact most regularly. As shown in Chapter I, AG Investigations operates the SECURE Strike Force, which targets major crimes committed by and against undocumented immigrants. Using pass-through money, AG Investigations pays for two full-time SBI agents to work on that strike force. There are disagreements between the agencies over how basic processes should function and how staff should be selected and jointly supervised. Because it seems that neither agency is fully satisfied, this would be a good opportunity to bring both sides together to improve or change the current arrangement.

Recommendation

1. We recommend that the Office of the Attorney General and the Department of Public Safety work together to clarify expectations and improve procedures related to the State Bureau of Investigation's participation on the SECURE Strike Force.

Chapter IV
Utah's Statewide Investigative Structure Largely Parallels Peer Practices

We researched how statewide criminal investigations are structured in other states and found that, although differences exist, the statutory structure of Utah's statewide investigative agencies appears to be in line with general practice. Also, despite suggestions of an inherent conflict of interest in the Office of the Utah Attorney General (OAG) because investigators and prosecutors are both employed by the same agency, prosecution standards from the American Bar Association and National District Attorneys Association (NDAA) state that the arrangement is appropriate. Finally, the Legislature may want to review how ***Utah Code*** authorizes state agencies to exercise full-spectrum peace officer authority.

Utah's Investigative Structure Appears Similar to That Found in Other States

We found that Utah's statewide investigative agencies are structured similarly to the agencies in six neighboring states.

We contacted several surrounding states to inquire about their statewide investigative structure. Specifically, we looked at the investigative offices of the attorney general (AG) and department of public safety (DPS) in each state. There were no findings to suggest that changes in structure or investigative focus are necessary in either Utah office at this time.

We researched and/or spoke with representatives from the OAG and State Bureau of Investigations (SBI)-equivalent investigative offices in Arizona, Colorado, Idaho, Nevada, New Mexico, and Oregon. We looked at state statute and agency websites, and we discussed programs, investigative focus, and the relationship between the two agencies in each state.

Our criteria search revealed three important observations regarding the investigative focus of equivalent agencies in other states:

- There is no overwhelming pattern in the amount of investigative authority given to either DPS or AG investigators or the types of crimes investigated by these agencies in other states.

- Certain types of crimes tend to be investigated by the same offices in each state. Utah's structure mostly parallels this trend.

- Investigative overlap often exists in the areas of financial fraud and public corruption. Chapter III showed that, to the extent overlap exists in Utah, it is in these areas.

First, no single trend emerged showing which investigative office should be granted total or limited jurisdiction over the enforcement of the state criminal statute. However, states tend to grant total enforcement authority to both DPS and AG investigators or to neither one. Figure 4.1 summarizes our findings.

No single trend emerged showing which office should be given total or limited jurisdiction over state criminal statute.

Figure 4.1 The Scope of the Statutory Mandate of Investigative Agencies Varies among States. Like Utah, some states grant both agencies authority to enforce the entire state criminal code.

Department of Public Safety Equivalent		
Investigative Mandate	Full Enforcement	Limited Enforcement
Arizona		X
Colorado		X
Idaho	X	
Nevada		X
New Mexico	X	
Oregon	X	
Utah	**X**	
Attorney General Equivalent		
Investigative Mandate	Full Enforcement	Limited Enforcement
Arizona		X
Colorado		X
Idaho		X
Nevada		X
New Mexico	X	
Oregon	X	
Utah	**X**	

Sources: OLAG 2017 review of other state statutes and conversations with other state authorities

Figure 4.1 shows that, like Utah, New Mexico and Oregon authorized both DPS and AG investigators to enforce the entire state criminal statute. Still, despite having authority to enforce the entire criminal statute, these agencies tend to focus their efforts on specific areas. In Oregon, for example, the AG's office has chosen to focus its investigative efforts on only the areas specifically outlined in statute. Similarly, Utah DPS and OAG mostly focus their resources on areas

that are emphasized in their respective sections of statute. Arizona, Colorado, and Nevada do not authorize either office to enforce the entire criminal statute. Only Idaho authorized its DPS-equivalent investigative agency but not its AG-equivalent investigative agency to have full criminal statute enforcement.

Second, some trends emerged regarding the areas of focus for DPS and AG investigators in other states. For example, five out of the six AG offices we contacted investigate all Medicaid fraud cases in the state. This is in line with how Utah operates. Similarly, four out of six state AG offices, as well as Utah's office, investigate internet crimes against children (ICAC). DPS investigators in other states are more likely than AG investigators to investigate narcotics and interdiction cases, violent crimes, and officer-involved critical incidents (OICIs).[12] Utah diverges from this trend, as both its DPS and OAG investigators can investigate OICIs.

Third, overlap often exists in the areas of financial fraud and public corruption investigations. Like Utah, in five out of the six states we reviewed, both entities can investigate public corruption and/or financial fraud cases. However, the amount of actual overlap varies by state when the category is further subdivided.

In five out of the six states, both DPS and the OAG investigate public corruption and white collar crime.

In some states, one office focuses on a specific type of public corruption or fraud. For example, Nevada's AG investigators focus on mortgage and insurance fraud. Similarly, the Colorado Bureau of Investigation within that state's Department of Public Safety reported that it has developed expertise with cases involving organized crime and identity theft with an additional emphasis on gaming and cybercrime. Other states have less-defined roles within the fraud/public corruption category. For example, aside from Medicaid fraud, a fraud or public corruption allegation in New Mexico could be investigated by either office. It is important to note that despite overlapping mandates and areas of focus, none of the six states

[12] OICIs were not discussed in this report, as there are very few investigated by either agency each year. Additionally, OICIs are investigated by a team of law enforcement officers from several agencies, based on a predetermined protocol. In 2016, SBI was involved in the investigation of seven OICIs, and OAG was involved in the investigation of two.

reported conflict between the two offices over investigative subject matter.

No clear best practices emerged from our review of other states and discussions with NCSL and NAAG.

In addition to conducting our own review, we also worked with the National Council of State Legislatures (NCSL) and the National Association of Attorneys General (NAAG). The NCSL helped us gather information, and the NAAG explained best practices in structure and legal authorization for AG investigators. During our review, we found no clear best practices that would necessitate immediate changes to the current statutory mandates of either Utah agency. Rather, the structure of statewide investigations in each state appears to stem from the various ways attorneys general and departments of public safety fit within the structure of state government. Future changes to SBI or OAG would, therefore, most likely reflect the Legislature's policy priorities regarding the types of crimes that should be investigated at the state level, based on a case-by-case determination of which office is better suited to investigate each crime.

Despite Concerns, OAG Investigations Model Is Appropriate

In recent years, including during this audit, some stakeholders have expressed concerns regarding the potential for a conflict of interest in the OAG Criminal Department because investigators and prosecutors are both employed by the same agency. Indeed, the co-location model used by OAG differs from the local law enforcement model, in which cases are investigated by police then screened with outside prosecution offices. Most notably, this concern was expressed as one justification for a 2014 bill that did not pass but sought to relocate the SECURE Strike Force from the OAG to DPS.

National standards allow investigators and prosecutors to be housed in the same agency.

However, a review of prosecution standards from the American Bar Association (ABA) and the NDAA[13] found that the model employed by the OAG is acceptable. The prosecution standards state that, when warranted by the responsibilities of the office, prosecutors should be provided with funds to employ properly trained

[13] See the Fourth Edition of the ABA Criminal Justice Standards for the Prosecution Function, 3-2.3 and the Third Edition of the NDAA National Prosecution Standards, 3-1.1 and 3-1.6.

investigators to assist with case preparation, supplement law enforcement investigations, and conduct original investigations.

In addition, the OAG model is in line with statistics from the NAAG, which show that the vast majority of U.S. states' and territories' attorneys general employ investigators. Though it is universally true that law enforcement officers must work to avoid conflicts of interest, there is no inherent conflict stemming from the structure of OAG and the AG Investigations Division (AG Investigations).

Legal Language Regarding OAG Authority To Investigate Could Be Clarified

The intent of the statutory language that grants peace officer authority to AG Investigations and other state agencies is not as clear as it could be. In light of confusing legal language regarding the definition of "statewide full-spectrum peace officer authority" and what restricts that authority, we sought a legal opinion from the Office of Legislative Research and General Counsel (OLRGC). The full opinion can be found in Appendix A of this report.

Statutory language appears to grant OAG with full authority to investigate crime.

The OLRGC opinion concluded that the plain language of Utah statute is likely sufficiently clear to give AG Investigations "full statutory authority to investigate any crime within the state," because peace officers employed by the state are specifically exempted from restrictions on jurisdictional limits. However, the OLRGC opinion further states that this interpretation "raises the question regarding whether law enforcement officers employed by other state agencies also have full-spectrum authority." Based on the same statutory language that empowers AG Investigations, it appears that statewide full-spectrum peace officer authority extends to other state agencies like the Fraud Division of the Department of Insurance or to peace officers working for the Department of Natural Resources.

Current statute raises questions regarding whether other state agencies have full-spectrum peace officer authority.

Regardless of whether they technically have broad legal authority, it is probably unlikely that peace officers employed by state agencies, including those in the OAG, would independently choose to operate outside their agencies' scope of operations. Of the 375 AG Investigations' case files we reviewed, we identified fewer than 10 that we feel may have fallen outside the specific AG Investigations duties outlined in statute. Nevertheless, we recommend that the Legislature

consider examining statutory language that describes and defines law enforcement officers' full-spectrum peace officer authority[14] to determine if it matches legislative intent and whether it should be clarified.

Recommendation

1. We recommend that the Legislature consider examining statutory language that describes and defines law enforcement officers' full-spectrum peace officer authority to determine if it matches legislative intent and if it should be clarified.

[14] Specifically, ***Utah Code*** 53-13-103(3)(a), 53-13-101(11), and 53-13-102(1).

Appendix A

OLRGC
Office of Legislative Research and General Counsel

Michael E. Christensen
Director

John L. Fellows
General Counsel

Brian Dean, Audit Manager
Jake Dinsdale, Lead Auditor
Office of the Legislative Auditor General
W315 House Building
Utah State Capitol Complex
Salt Lake City, UT 84114

May 30, 2017

Mr. Dean and Mr. Dinsdale:

Question

You have requested a legal opinion regarding whether the Office of the Attorney General is correct in its assertion that its investigators have statutory authority to investigate any crime within the state.

Short Answer

Based on my review of the applicable provisions of the Utah Code, it is my opinion that the Office of the Attorney General is correct that its investigators have statutory authority to investigate any crime within the state.

Analysis

Utah Code Subsection 53-13-103(3)(a) provides as follows:

> A law enforcement officer has statewide full-spectrum peace officer authority, but the authority extends to other counties, cities, or towns only when the officer is acting under Title 77, Chapter 9, Uniform Act on Fresh Pursuit, unless the law enforcement officer is employed by the state.

Utah Code Subsection 53-13-103(1)(b)(vii) provides that the term "law enforcement officer" includes "special agents or investigators employed by the attorney general . . ."

Utah Code Subsection 53-13-101(11) clarifies the authority of a law enforcement officer as follows:

> "Spectrum" means that which encompasses the scope of authority. "Full spectrum" encompasses total 24-hour authority; while anything less than full authority is contained or restricted within certain limits as set forth by statute, ordinance, policy, or rule.

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This subsection is not drafted as clearly as it could have been. However, the language is sufficiently clear to uphold the assertion that investigators in the Office of the Attorney General have statutory authority to investigate any crime within the state. The Utah Supreme Court has stated that:

Where statutory language is plain and unambiguous, this Court will not look beyond the same to divine legislative intent. Rather, we are guided by the rule that a statute should generally be construed according to its plain language.

Brinkerhoff v. Forsyth, 779 P.2d 685, 686 (Utah 1989).

The statute is clear enough that it is unlikely that a court would look beyond the plain language to determine its meaning.

Utah Code Subsection 53-13-101(11) clearly states that "full spectrum" encompasses "*total* 24-hour authority" (italics added). It further states that "anything less than full authority is contained or restricted within certain limits as set forth by statute, ordinance, policy, or rule." As stated above, a law enforcement officer, which includes a special agent or investigator of the Office of the Attorney General, is expressly given "full-spectrum" peace officer authority. Further, the limitation on jurisdiction contained in Utah Code Subsection 53-13-103(3)(a) does not apply to a law enforcement officer employed by the state. And, finally, the limitation on authority to that "contained or restricted within certain limits as set forth by statute, ordinance, policy, or rule" only applies to a law enforcement officer who is granted "anything less than full authority." Utah Code Subsection 53-13-101(11).[1]

Thus, it is my opinion that a court would hold that the plain language of Utah Code Subsection 53-13-103(3)(a) grants the Office of the Attorney General's investigators full statutory authority to investigate any crime within the state.[2]

---

[1] The fact that a number of statutory provisions specifically mention certain duties or powers of the attorney general to investigate certain conduct does not change this analysis. Specific duties or authority may be enumerated separate from a full grant of authority without reducing that authority. This is often done to emphasize the particular responsibilities of a law enforcement officer in relation to a specific category of conduct or a specific program.

[2] While I realize that this conclusion raises the question regarding whether law enforcement officers employed by other state agencies also have full spectrum authority, answering that question is beyond scope of this opinion (though it appears from the plain language that they do). However, I will note that there is a valid policy reason for the Legislature to grant full spectrum authority to law enforcement officers of all state agencies. This allows qualified law enforcement officers from any state agency to assist in investigations by other agencies if the need arises. Moreover, it is unlikely that a law enforcement officer employed by a state agency will unilaterally attempt to investigate something beyond the scope of the state agency's authority because, while the authority of the law enforcement officer is not limited, the authority of the state agency that employs the law enforcement officer is limited (and a state agency could, potentially, further limit the scope of its investigator's duties by rule or policy). The Legislature could, of course, revisit the issue of the authority of law enforcement officers employed by the state in a future legislative session.

Conclusion

Special agents or investigators employed by the attorney general are law enforcement officers who are granted statewide full-spectrum peace officer authority under Utah Code Subsection 53-13-103(3)(a). Because these agents or investigators are employed by the state, they have *total* law enforcement authority that is not limited by other provisions that describe duties or powers relating to specific statutory responsibilities of the Office of the Attorney General. Thus, the Office of the Attorney General is correct that its investigators have statutory authority to investigate any crime within the state.

Sincerely,

Thomas R. Vaughn
Associate General Counsel

Agency Responses

State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of Public Safety

KEITH D. SQUIRES
Commissioner

August 14, 2017

Legislative Auditor General John Schaff
Office of the Legislative Auditor General
W315 House Building
Utah State Capitol Complex
PO Box 145315
Salt Lake City UT 84114

Response: A Performance Audit of Statewide Investigative Functions Report No. 2017-06

Legislative Auditor General Schaff,

The Department of Public Safety's State Bureau of Investigation (SBI) is grateful for the effort and the time spent by the Office of the Legislative Auditor General in doing A Performance Audit of Statewide Investigative Functions.

The areas of evaluation outlined in the audit were helpful for SBI in understanding areas of improvement and identifying potential changes to the way resources are allocated.

Below are responses to the audit's findings.

Chapter I: Investigations Overlap is Minimal Despite Appearance:

SBI is the investigative arm of the Department of Public Safety. The Department of Public Safety is the law enforcement arm of the State's executive branch and serves as a resource for all law enforcement in the State for investigative support.

The clarifying of investigative roles related to State statute is helpful and serves as a resource for funding allocation decisions. Additionally, information provided in Chapter I, is helpful in assessing and improving SBI operations. SBI is committed to the continued need for cooperation and collaboration with the Attorney General's Office.

Chapter II Poor Records Management Makes It Impractical to Determine Efficiency and Effectiveness:

SBI recognizes challenges with records management due to scope of responsibility, task

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force assignments and geography. We have taken steps to reduce the number of activity codes agents use related to the records management system. Thirty one activity codes are now used by SBI agents to track their case work and type. This reduction has led to more efficiency in reporting of time and case type information. These activity codes are still being reviewed for effectiveness.

Case numbers are now being tracked relative to the activity code or type of investigation and an SBI case number is being generated and assigned to cases referred from the Utah Highway Patrol and other type referrals. The audit indicated that SBI investigated around 1,600 cases in 2016. With the corrections to the records management system SBI has improved case tracking and has worked over 1,200 cases year to date.

SBI administration is continuing to evaluate and look for ways to improve efficiency and accountability within the records management system.

In summary, the information provided by the legislative audit has been valuable and will continue to be a document to help inform future decisions.

Sincerely,

Keith D. Squires
Commissioner

STATE OF UTAH

OFFICE OF THE ATTORNEY GENERAL

SEAN D. REYES

ATTORNEY GENERAL

Spencer E. Austin
Chief Criminal Deputy

Tyler R. Green
Solicitor General

Missy W. Larsen
Chief of Staff

Bridget K. Romano
Chief Civil Deputy

August 9, 2017

Mr. John M. Schaff, CIA
Auditor General
State of Utah – Office of the Legislative Auditor General
W315 Utah State Capitol Complex
Salt Lake City, UT 84114-5315

RE: Report No. 2017-06

Dear Mr. Schaff:

Please find attached the responses from the Office of the Utah Attorney General (OAG) to the findings of Utah Legislature Report No. 2017-06: A Performance Audit of Statewide Investigations Functions ("Investigations Audit"). While we agree in principal with your recommendations in the Investigations Audit, we offer our own slight clarifications to better frame your conclusions in the appropriate context.

Before addressing the specific text of the report, let me thank you for your work and that of your team. Over the past three and a half years, while I have served as Utah's Attorney General, our office has benefited from various reports prepared by the Office of the Legislative Auditor General (OLAG). As to this Investigations Audit, we sincerely appreciate your team's expertise, time commitment, resource allocation and thorough review of the AG Investigations Division (AGI) and the resulting report. We look forward to the Utah State Legislature, executive branch and any other interested parties taking time to review the information you have compiled in this report.

Please express my personal thanks and our office's collective appreciation to each member of your team who worked on this Investigations Audit. In all of our interactions with your team members, they conducted themselves professionally and took great care to understand those they interviewed along with the systems and data they encountered. We feel fortunate to work with colleagues in state government, such as you and your team, willing to look beyond political agendas in search of the truth in service to the people of Utah.

We are extremely pleased by the results of this report. Not only does it reinforce the effectiveness of how we are doing our jobs in the OAG, it demonstrates that the AGI is structured and operating optimally. We appreciate your inclusion of some minor points of improvement that we have either already implemented or are eager to incorporate.

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RESPONSE

CHAPTER I

Overview

As noted in your report, the AGI shares statewide investigative authority with the State Bureau of Investigations (SBI). SBI operates within the Department of Public Safety (DPS). We are pleased your audit revealed that there is very little overlap in investigative function between the OAG and SBI and where there is overlap, it is preferred. We agree that in most cases, the AGI and SBI perform very different and non-duplicative functions, with very distinct work-experience and skill sets often needed by the investigators in the respective agencies beyond the general investigative skills required by both. Where there is overlap, as in various task forces, the commonality of general skills in both agencies and the need for overall manpower to address various threats, results in joint jurisdictional efforts being a benefit to the State and an optimal dynamic in terms of safety, effectiveness, and resource allocation.

Clarification

Figure 1.3 of the Report may give the impression that state funds were used exclusively and disproportionally to grow the AGI over the past decade compared to SBI. In reviewing Figure 1.3, it is important to understand that the growth in expenditures for AGI, compared to that of SBI, between 2007-2016, included both federal and state funding.

On page 3, it is reported "AG Investigations made greater use of federal dollars to maintain and expand investigative operations". A large part of the noted AGI growth over a decade was due to the implementation of the SECURE Strike Force and the Mortgage and Financial Fraud Unit (MFFU). The intent was to initiate a one-time state or federally funded pilot program for a short period allowing the State Legislature to evaluate those programs and decide whether ongoing state funding would be allotted. All FTEs in both units were hired as temporary contracts. In both cases, the successful programs were then permanently funded by the Legislature.

Additionally, it should be noted that AGI investigative units such as the SECURE Strike Force and the OAG's Mortgage and Financial Fraud Unit were not sought out by the AGI to expand the size of its investigative ranks or increase its influence or authority. Rather, in both cases during the past decade, the Utah State Legislature, after a great deal of research, discussion, debate and eventual legislation, chose of its own accord, to create a statewide taskforce in one instance and dedicated investigative assets in another for specific law enforcement functions and decided to site those assets within the OAG. While the OAG is proud of the work done by the AGI and these specific units, and the OAG believes it was the correct decision to place them within our agency, the decisions to do so were carefully considered actions undertaken by the will of the people through the Utah Legislature and signed by the Governor.

Finally, even with this decade-long growth for AGI, the comparison in Figure 1.3 clearly demonstrates that in each individual year over that decade, the OAG still had less of a budget impact overall and to the State than SBI.

We appreciate the additional information in Chapter I.

CHAPTER II

Overview

The OAG appreciates the extensive work performed by the OLAG in reviewing records management in both agencies. While the OAG strives to maintain and report all investigative actions at the highest level of efficiency and effectiveness, there is always minor room for improvements. Those highlighted by your report are currently being implemented or have already been implemented. The following two recommendations were offered in the Investigative Audit report:

Recommendation #4

We recommend that the Office of the Attorney General compile and report SECURE Strike Force activities as required by statute.

Response:

The OAG agrees with this recommendation. In 2012, the Utah Legislature passed a bill requiring reporting by the OAG on SECURE Strike Force activities. In 2013, the first year of reporting, the OAG compiled an extensive written report for SECURE Strike Force activities. In that same year, the OAG made an oral report at the request of the Law Enforcement and Criminal Justice Interim Committee which the OAG understood to be the method for its annual reporting. In 2014, the OAG again compiled a detailed written report and gave an oral presentation at the request of the Legislature in the same manner as the prior year. In 2015, the OAG prepared a draft written report and was in the process of finalizing it when several factors caused it to put its reporting activities on hold.

First, directly after the tragic passing of Utah House Speaker Becky Lockhart, as the House was in transition, new Speaker of the House Greg Hughes implemented a directive to reduce certain reports to the Legislature. The OAG understood that SECURE was part of the reporting reduction.

Secondly, the Legislature, unlike previous years, never sent notice to the OAG for a time or committee in which to report.

Finally, OAG Justice Division Director Gregory Ferbrache, whose team prosecutes SECURE cases, due to changes in overall legislative reporting and records reduction discussions, believed that the Legislature would request when they wanted to receive the report. OAG Legislative Liaison Wade Farraway substantiated that there were discussions with legislators where our office was told to wait until a notice was received. For those reasons, the OAG held onto its 2015 report and could have compiled a 2016 report but did not until it received instructions by the Legislature when and to whom it should submit the reports. The OAG is compiling 2015, 2016, and 2017 written reports and, based on the recommendation of the OLAG, will deliver the reports to the offices of the Utah Speaker of the House and Utah Senate President.

Recommendation #5

We recommend that the Office of the Attorney General evaluate current methods of case tracking in its various units to ensure that cases are accurately and consistently managed.

Response:

The OAG agrees with this recommendation. The report highlighted two areas of possible optimization. In the first, the AGI Special Prosecutions Unit, whose cases comprise about 8 percent of all AG investigations, could implement more uniform utilization of existing electronic tracking resources. In the second, the OLAG found that in certain AGI cases, case numbers can be streamlined. Although separate case numbers are sometimes necessary to track different portions of cases for constitutional and prosecutorial reasons, there are times a more streamlined approach is appropriate and the OAG has begun implementation.

CHAPTER III

Overview

The important information in this chapter is essential for both offices to continue to perform necessary statewide investigations and build better collaboration. The OAG is pleased to see that there is minimal overlap in investigations and that hundreds of cases in both agencies in 2016 did not show conflict or significant overlap.

Recommendation

We recommend that the Office of the Attorney General and the Department of Public Safety work together to clarify expectations and improve procedures related to the State Bureau of Investigation's participation on the SECURE Strike Force.

Response:

The OAG agrees with this recommendation. The OAG is working closely and cooperatively with DPS on a number of current matters including the efforts to address problems in downtown Salt Lake City's Rio Grande area. This recommendation appears to be focused on an observed tension regarding statewide investigations. The OAG agrees that legislative disagreements in recent years have existed due to differences in opinion. In addition, tensions have been fueled by lingering questions that possibly led to this audit.

In 2014, when a bill was introduced to relocate the SECURE Strike Force from the OAG to DPS (see Page 30), the OAG immediately defended the excellence of the current model of SECURE and its placement in the OAG. Since that time, there have been additional legislative actions and beliefs that have further complicated collaboration.

The OAG has excellent relationships with multiple agencies and looks forward to better collaboration with DPS, including with regard to the SECURE Strike Force.

CHAPTER IV

Overview

The OAG appreciates the findings in Chapter IV and the extensive work performed to detail investigative structures and prosecutorial standards. As found, the OAG investigations model of investigators and prosecutors employed by the same agency is appropriate. AG Investigations has found that the ability to work with onsite prosecutors on complex cases is not only appropriate, but often preferred and essential to effective investigations, prosecutions, and appeals.

The OAG also appreciates the report's attention to statutory language granting peace officer authority to AGI.

Recommendation

We recommend that the Legislature consider examining statutory language which describes and defines law enforcement officers' full-spectrum peace officer authority to determine if it matches legislative intent and if it should be clarified.

Response

The OAG agrees with this recommendation.

Thank you again for the excellent work by your entire team. We look forward to working towards full implementation of these recommendations.

Sincerely,

Sean D. Reyes
Utah Attorney General