

Approved:



Department of Transportation

Effective: September 19, 2012

Office: General Counsel

Topic No. 225-085-001-b

## GENERAL LIABILITY CLAIMS

### PURPOSE:

To establish a process for the handling of general liability claims and to assist Florida Department of Transportation (Department) employees in processing and forwarding claims against the Department to the Central Office, Office of the General Counsel (OGC), and to ensure compliance with statutory requirements.

### AUTHORITY:

Sections 20.23(4)(a) and 334.048(3), Florida Statutes (F.S.)

### SCOPE:

This procedure affects any Department employee or office receiving notice of a general liability claim against the Department and any Department employee responsible for investigating or processing such claims. Offices primarily responsible for the requirements of this procedure are Maintenance, Construction, and the OGC.

### REFERENCES:

- Sections 95.11(3), 334.044(8), 334.044(30), 335.055, 768.28, 768.81, F.S.
- Department Topic No. 500-000-015, Loss Prevention Manual
- Department Topic No. 850-005-001, Reporting Incidents and Management of Damage Repair

### BACKGROUND:

General liability claims include personal injury and property damage claims against the Department, which must be submitted in writing as required by **Section 768.28(6)(a), F.S.** General liability claims do not include contract claims.

For every written notice received by the Department regarding a potential general liability claim against the Department, a General Liability Claim File will be established by the Office of the General Counsel. The guidelines and requirements established in this procedure establish a basis for accountability within the Department for meeting the

requirements of Florida law and to assist the OGC and the Department of Financial Services in processing and resolving these claims.

## 1. RESPONSIBILITY FOR DISTRICT OR FIELD OFFICE RECEIVING A GENERAL LIABILITY CLAIM

- 1.1 Any general liability claim or potential claim against the Department shall be forwarded within 5 working days with the envelope and any attachments, via facsimile to (850) 412-8078 or e-mail to [dotclaims.review@dot.state.fl.us](mailto:dotclaims.review@dot.state.fl.us), and the party making the claim (claimant) shall be advised accordingly. (See **Appendix A** for sample cover letter.) Original documents should be mailed via interoffice mail to Mail Station 58.

Telephone inquiries shall be directed to the attention of the OGC Claims Assistant at (850) 414-5357. Any employee advised over the telephone of a potential general liability claim against the Department shall obtain the name and address of the caller and forward the appropriate form identified in **Section 1.2** of this procedure to the caller along with a **Cover Letter** within three working days. See **Appendix A**.

- 1.2 **Forms:** When an oral claim is received, depending on the type of claim, one or more of the following forms shall be completed by the claimant and forwarded to the OGC:
- (a) **Form No. 225-085-01, Statement of Claim for Property Damage.** This form is to be completed when reporting damages to personal property and there is no bodily injury;
  - (b) **Form No. 225-085-03, Statement of Claim for Bodily Injury & Property Damage.** This form is to be completed for claims of bodily injury or claims of bodily injury with property damage;
  - (c) **Form No. 225-085-05, Lien Disclosure Statement.** This form is to be completed and submitted with either claim form **225-085-01** or **225-085-03**.

**NOTE:** These forms are available from the Department's Forms Library on the Department Infonet.

- 1.3 If a general liability claim involves Department equipment (such as a tractor or mower) or a Department vehicle, or if the incident complained of

occurs within the boundaries of a construction project, the office or employee receiving the claim shall forward the following information to the OGC within ten working days:

**Department Equipment or Vehicle:** Copy of the *Florida Traffic Crash Report*, if applicable, along with a completed copy of the Department's *Vehicle Crash/Incident Report, Form No. 500-000-15*, available from the Department's Forms Library.

**Construction Project:** Name, address, telephone number, e-mail address and contact person of the contractor, the project/job number, and the contract number. If a permit is involved, furnish a complete copy of the permit to the OGC. The OGC will notify the claimant that his or her claim has been referred to the contractor.

## 2. OFFICE OF THE GENERAL COUNSEL, RESPONSIBILITY

Immediately upon receipt of a general liability claim, the OGC will:

- (a) Set up a General Liability Claim File;
- (b) Notify the claimant or the claimant's attorney of receipt of the claim;
- (c) Forward a specialized *Investigation Request, Appendix C*, to the appropriate Investigator or District Maintenance Engineer; and
- (d) Forward a complete copy of the notice and related correspondence to the State of Florida Department of Financial Services, Division of Risk Management, State Liability Claims, Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0300.

## 3. INVESTIGATIONS

The OGC will request the appropriate District Maintenance Engineer, or assigned designee, to assist in conducting the investigation related to any claim. See *Appendix C* for a sample *Investigation Request*. The District Maintenance Engineer, or designee, is responsible for coordinating the investigation in the district and reporting the results within 30 calendar days to the OGC. The following guidelines are provided to assist the District in completing an investigation.

- 3.1 When the District Maintenance Engineer forwards the investigation request to someone other than a field maintenance unit for a response

(such as a Construction Office or another District), the OGC shall be copied on the forwarding memo. For a sample **Forwarding Memo** see **Appendix B**.

- 3.2 Although all questions on the **Investigation Request, Appendix C**, may not be applicable to a particular situation, each question requires a response. Use "N/A" for "not applicable" when the question is not relevant to the situation.
- 3.3 The last question on the **Investigation Request Form** solicits information not addressed by specific questions in the request. Please insert any information you believe may be helpful.
- 3.4 Whenever documentation is available to supplement responses, please provide a copy of the documentation (e.g., incidents involving drawbridges shall be accompanied by a copy of the bridge tender's telephone log, bridge log, accident report, bridge tending contract, maintenance log, and inspection report). Documentation for incidents involving Department vehicles should include the **Florida Traffic Crash Report** and the **Vehicle Crash/Incident Report**, and incidents occurring within a construction project, should include a copy of **Form No. 700-010-64, Engineer's Maintenance of Traffic Evaluation at Crash Site**, attached to or enclosed with the investigation report.
- 3.5 In the event two or more separate general liability claims are made as a result of one incident, there can be more than one investigation request arising from the same incident. Forward a complete copy of the original investigation responses accompanied by a cover memo indicating that more than one claim on the same incident has been received, refer to the original or first claim reported, as well as any additional claims resulting from that particular incident.
- 3.6 Investigation Reports or responses shall be completed on the **Investigation Request Form, Appendix C**, and returned to the OGC via e-mail at [dotclaims.review@dot.state.fl.us](mailto:dotclaims.review@dot.state.fl.us) within 30 calendar days of receipt. Be sure to include the Department's File Number in the subject line.

#### 4. CONFIDENTIALITY

Any documents such as reports, correspondence, memoranda, or photographs prepared or developed as a result of the Department being placed on notice of a claim or in anticipation of litigation are confidential and exempt under **Sections**

**284.40 and 768.28(16)(b), F.S.** These documents cannot be released or their contents divulged without the express consent of the OGC or the State of Florida Department of Financial Services, Division of Risk Management. Any Department employee receiving a request for confidential records shall contact the OGC Claims Section, or refer the party making the request to that office.

## **5. LEGAL PLEADINGS/DOCUMENTS**

Any employee served with a **Summons and Complaint** or a **Subpoena** arising out of an incident occurring during the course and scope of the employee's employment shall immediately forward the original documents to the OGC, forward a copy to his/her immediate supervisor, and keep a copy for the employee's records. When forwarding these documents to the OGC, identify the employee's work address, telephone number, and e-mail address. Any communication regarding legal pleadings/documents shall be coordinated with the OGC or outside counsel representing the Department.

In the event an employee receives a subpoena for testimony at a trial or deposition, relating to that employee's employment with the Department in a matter to which the Department is not a party, the employee's respective District Chief Counsel shall be contacted immediately for instructions.

## **6. REQUESTS FOR DEPARTMENT/PUBLIC RECORDS**

Any public records request for documents/records pertaining to an incident involving Department property or occurring on Department right of way shall be brought to the attention of the OGC. If no General Liability Claim File or claim against the Department exists, then the documents requested may be furnished to the requesting party.

Original records cannot be removed from Department premises unless accompanied by a representative of the Department responsible for their safe return. If a General Liability Claim File exists in the OGC, a copy of the public records request along with any documents not confidential and exempt furnished to the requesting party shall be forwarded to the OGC.

Guidance for responding to public records requests may be found on the OGC SharePoint site.

## **7. TRAINING**

There is no mandatory training related to this procedure.

## **8. FORMS**

The following forms are available from the Department's Forms Library:

225-085-01, Statement of Claim for Property Damage

225-085-03, Statement of Claim for Bodily Injury & Property Damage

225-085-05, Lien Disclosure Statement

500-000-15, Vehicle Crash/Incident Report

700-010-64, Engineer's Maintenance of Traffic Evaluation at Crash Site

## **9. APPENDIX**

Appendix A - Claim Cover Letter

Appendix B - Sample Forwarding Memo

Appendix C - Investigation Request

## Appendix A

**CLAIM COVER LETTER:** Obtain a copy of this **Cover Letter** from the Office of General Counsel at: [dotclaims.review@dot.state.fl.us](mailto:dotclaims.review@dot.state.fl.us)

Dear Citizen:

The Florida Department of Transportation (Department) uses two types of claim forms to process claims. The first form is a "Statement of Claim for Property Damage" which is used **only** for claiming property damage. The second form is a "Statement of Claim for Bodily Injury & Property Damage" which is used when claiming bodily injury with or without property damage. Use only one form. Whichever form is used must be accompanied by a "Lien Disclosure Statement".

The claim forms must be filled out completely and accompanied by supporting documentation in order to avoid delays in processing. Please include photographs, estimates, receipts, and copies of any other evidence (e.g., police report or emergency report) which may exist.

Please return the signed "Statement of Claim for Property Damage" or the Statement of Claim for Bodily Injury & Property damage", along with the "Lien Disclosure Statement" and other documentation to: *Florida Department of Transportation, Claims Processing, 605 Suwannee Street, MS-58, Tallahassee, Florida 32399-0458*, or email the documents to [dotclaims.review@dot.state.fl.us](mailto:dotclaims.review@dot.state.fl.us). Upon receipt of the information the claim will be processed and investigated within 90 days. If you have any questions, please do not hesitate to contact our office at (850)414-5357.

Sincerely,

Name  
Title  
Office of General Counsel  
(850) 414-5357

Encl.

## Appendix B

**FORWARDING MEMO:** Obtain a copy of this *Forwarding Memo* from the Office of General Counsel at: [dotclaims.review@dot.state.fl.us](mailto:dotclaims.review@dot.state.fl.us)

The following would be e-mailed:

The OGC Claims Section needs your help. Please answer the enclosed **questions** to the best of your knowledge, and **return to me by reply email**. If you are not the correct person to receive this request and know who is, please indicate or forward these questions to the appropriate person and copy me and [dotclaims.review@dot.state.fl.us](mailto:dotclaims.review@dot.state.fl.us). Claim responses should be returned no later than 30 days after receipt. It is imperative that you answer all questions regarding contractor claims. We cannot make a determination regarding the responsibility, if any, of the Department or contractor if an Investigation Request is not fully completed (using "N/A" when appropriate). Please be sure to include complete contact information for the contractor, including address, phone number, e-mail address and contact person. Your cooperation is appreciated.

Thank you.



## Appendix C

Obtain a copy of this **Investigation Request** from the Office of General Counsel at:  
[dotclaims.review@dot.state.fl.us](mailto:dotclaims.review@dot.state.fl.us)

### Florida Department of Transportation (Department) **INVESTIGATION REQUEST**

*\*\*\* The information contained herein is confidential and exempt from public records requests \*\*\**

**Instructions:** Please review the materials accompanying this **Investigation Request** and respond to each of the following questions within 30 days. If you are unable to answer a question please state why. Answers should be typed directly into this Word document and returned to the sender via e-mail.

Claimant Name:

Incident Date:

FDOT File No.:

1. Does the Department own the property where the subject incident occurred?
2. If the Department does not own the property, who does?
3. If the Department owns the property, was there a maintenance, construction, repair, asset management, or other contract(s) in effect at the time and place of the subject incident?

If so, please identify:

- a. The names and addresses of any and all such contractors;
  - b. The contact persons for such contractors (name, address, telephone, e-mail address);
  - c. The Contract Number(s);
  - d. If applicable, the Project Number and name and contact information for the Project Engineer.
4. Please inspect the site of the incident and provide the following:

- a. Digital photos relevant to material aspects of the incident. Photos should be identified by date taken, photographer, and description of subject matter.
  - b. Your name, the date of your inspection, and the identity of any Department personnel who may have also investigated the site.
  - c. The names and contact information for persons you consulted with or who provided information regarding the incident.
  - d. The identity and location of any documents or other materials relevant to the incident. Scan and attach any especially significant documents.
5. Please indicate whether the Department had prior notice of the subject condition(s) and if so, what actions were taken in response to such notice and provide appropriate documentation.
  6. Please indicate whether there have been any repairs of the subject area, and if not, when repairs are scheduled and who will be making them and provide appropriate documentation.
  7. Please identify any person(s) most knowledgeable about matters concerning the incident and/or site, and provide contact information.
  8. Additional information that you believe may be helpful:

Thank you for your anticipated prompt cooperation.

Name  
Title  
Office of the General Counsel  
(850) 414-5357 - Direct  
(850) 412-8078 – Facsimile  
Dotclaims.review@dot.state.fl.us