

SWALLOW AND SHURTLEFF CHRONICLED,  
PART 23 OF A SERIES

# The AG's Vehicle Fleet

*Is John Swallow violating  
vehicle-use law when he  
should be enforcing it?*

By Lynn Packer

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**Swallow caught with his hand  
in the motor pool cookie jar.**

Answers are shrouded in secrecy: Why John Swallow needs 11 trucks in his 54-vehicle fleet, many of them four-wheel-drive and quad cab. How 40 AG employees qualified for “take-home” vehicle status and are permitted to commute to work in state-owned vehicles when the legislature seems to have set the limit at 28. Why Swallow’s chef deputy, Kirk Torgensen, qualifies for a car at all and how did he get a mid-sized vehicle when the state’s default vehicle is a compact.

Sam Lee who directs the state’s Division of Fleet Operations (DFO) won’t reveal the names of those to whom Swallow has given take-home status. “I want to be careful not to release any information about their vehicles that may be used for undercover work,” Lee says.

“Our default replacement is actually a compact sedan,” Lee concedes. “So anything other than a compact sedan the agency has to provide a justification for that.” But Lee won’t provide the reasons the AG gave for its large pickups, sport-utes and mid-sized sedans.

Lee says it’s not his job to verify why Swallow permits so many employees to commute with state vehicles and why to most of the vehicles are oversized?

When it comes to the AG Lee trusts not verifies.

“They are not going to reveal the details of what they are doing,” Lee responded. “Because it is part of their investigation and undercover use. All they are simply going to say is undercover and investigational use.”

The Attorney General’s Office does have investigators who could qualify for take-home status. But do all qualify? And why do so many need trucks?

“As part of their investigations they may have to take evidence from a home and so they have equipment and trucks and the ability to take evidence away from whatever they are investigating,” Lee surmised.

Lee said the AG could rent different types of vehicles from the state-contracted vendor Enterprise Rent-A-Car or “borrow” cars from other state agencies on an as-needed basis. But he said he does not know and does not need to know why Swallow wants so many trucks other than

they they are for some sort of law enforcement use. Lee said it is up to Swallow to enforce the rules that govern vehicle size and commuting privileges.

A state administrative rule does say, “Agencies with drivers who have been granted commute or take home privileges shall establish internal policies to enforce the commute use, take home use and personal use standards established in this rule.” Swallow is charged with overseeing his motor pool. But the rules do not say, however, that enforcement ends at that level.

So far, the AG has not shared its enforcement mechanism with *packerchronicle.com*. And has not shared records that could reflect the extent to which any enforcement is taking place.

## Kirk Torgensen: Offender in Chief?

By law Utah Attorney General John Swallow is entitled to his new, 2014 Jeep Grand Cherokee, not only for commuting to work but also for any other personal use. It’s written into the Utah Code. Lee says Swallow is the only one in the AG’s office with full-blown, personal use.

Swallow has conferred 40 of his employees with the more restrictive, “take-home privilege.” Some of the restrictions include:

- It has to benefit the state.
- The person is always on call to respond to potential life or significant property damage emergencies.
- Or the employee works at least 80 percent of the time out of the office and the vehicle serves a mission-critical-function.
- Take-home drivers must keep a daily log of their first and last trips.
- The issuance of a commuter privilege must be reported annually to the director of fleet operations.
- Privilege recipients must pay taxes on the benefit.



Chief Deputy Kirk Torgensen and the state’s Toyota Camry. Is he the chief offender?  
about Torgensen’s car.

One record released by the legislative analyst indicates Swallow may count Torgensen as an investigator who use vehicles

Swallow gave the take-home privilege to his chief deputy, Kirk Torgensen. Torgensen commutes in a state-owned, mid-sized Toyota Camry. But, so far, neither Torgensen nor the Attorney General’s spokesman nor the DFO director will say how Torgensen qualified to be assigned any car. None will explain why he needed to be upgraded to a mid-size vehicle. Neither Torgensen nor the AG spokesman will not comment on whether he also uses the vehicle for personal use, besides commuting. Neither will they provide his legally-required daily trip log.

The director of fleet operations, Sam Lee says he needs permission from the Attorney General before releasing any information



Torgensen’s state vehicle carries conventional plates.

for undercover work. Another hint is that Torgensen's assigned Camry does not have EX plates attached to most government vehicles.

## The Governor and His Departments: Hear No Evil, See No Evil

Utah law authorizes John Swallow to grant take-home privileges to his employees if they meet the requirements. It also charges him with making sure the rules are followed, that one of his employees does not make any personal use of the vehicle between work and home. The grantor oversees his own decisions.

But does anyone watch the watchdog? No says DFO director Lee. Lee says he plays no enforcement role, that it's left to agency directors to decide who gets the commuting privilege to make sure no rules are broken.

Governor Herbert declined an interview. Neither his deputy chief of staff and communications director Ally Isom nor his other deputy chief of staff Mike Mower would say whether they agree whether their administrative branch of government has any duty to enforce vehicle rules in the AG's office or any other state agency. They apparently stand by their DFO chief Sam Lee who says the same agency directors who decide how vehicles are used are also the same ones who decide whether they have broken any rules.



**Hear no evil, see no evil, speak no evil. The governor, his staff and his fleet director believe the buck stops with John Swallow.**

## Motor Pool Flashback

In 1966 Utah's so-called Little Hoover Commission investigated government waste and found the state's vehicle fleet was being mismanaged. There was no central fleet manager as there is today. But it would be a long time before management was centralized.

Eleven years later, in 1977, an audit conducted by the state's legislative auditor general reported that vehicle management was still decentralized and at least one employee was caught commuting to work with a state vehicle, which was prohibited at the time. The audit also said the state was relying too much on intermediate-sized cars even though smaller cars were more fuel-efficient.

In 1997, more than 30 years after the Little Hoover Commission report, the legislature finally combined 27 individual agency motor pools into one fleet creating the Division of Fleet Operations--the DFO. Then in 1999 the legislature mandated a reduction in the state fleet. In the ensuing five years the fleet size dropped from 7,401 to 7,296 vehicles.

But—hot off the press, just released this week—the 2013 State Vehicle Report shows the state fleet now up to a record 7,478. That's despite the fact that during the same time frame Utah eliminated a lot of pool cars by contracting with Enterprise Rent-A-Car to rent on an as-needed basis. The state also enhanced its compensation plan to encourage employees to use their own vehicles with reimbursement for mileage. Still the fleet size has grown.

In 2004 the chairs of the Governmental Operations Interim Committee asked for an audit of the overall state agency use of motor vehicles. One of the concerns was unauthorized personal use of state vehicles.

The audit, completed in 2005, found that more than half of the state’s agencies did a poor job monitoring vehicle use. “The take-home vehicle program was reviewed,” the report said, “because this is an area within fleet operations with a high probability of state vehicle misuse.” The audit blamed the DFO for not exercising sufficient oversight and enforcement. “The DFO needs to use its oversight authority more assertively when working with agencies to better monitor state fleet information,” the audit said. In detail it said, “Take-Home Vehicles Need to Be Tracked and Monitored More Effectively”:

DFO needs to accurately track take-home vehicle information and monitor the take-home program to ensure that state agencies are complying with state and federal requirements. DFO should periodically review take-home vehicle information for accuracy and review vehicle assignments to ensure that these vehicles are needed for state employees to successfully carry out their job functions. It appears that some current take-home vehicle assignments are unnecessary for performing job duties as outlined by state policy. The take-home vehicle program was reviewed because this is an area within fleet operations with a high probability of state vehicle misuse. The take-home vehicle is designed to assist state employees to perform their job functions cost-effectively. As a result, the take-home vehicle program should benefit the State.

Lee said he is familiar with the 2005 audit. But he chooses not to follow its advice. In an interview he was asked how he tracks whether anyone is abusing the privilege. “We expect the executive director for that agency to sign off that employee needs take-home,” he said. “So it goes to the highest level of the agency to sign off take-home privilege.”

Marilee Richins who sat in on the interview agreed that agency heads, not the fleet director, monitor any misuse. Richins, operations officer for the governor’s Department of Administrative Services, and Lee agree that DFO’s sole oversight is to “document that agency directors have signed off on take-home privileges.” During the interview Richins underscored the point by telling Lee, “You’re the collector of the information you’re not the enforcer, right?”

“Right,” he responded

Richins said, “Sam’s responsibility is to document the process and make sure we have the records. But the enforcement of the correct use of the vehicle is at the agency level.”

That’s despite the 2005 audit that called for the central vehicle pool authority—the DFO—to check for abuse:

DFO needs to use its oversight authority more assertively when working with agencies to better monitor state fleet information. We recommend that DFO periodically monitor a sample of vehicle information data to determine if vehicle information is accurate and vehicles are being used appropriately.

.....

DFO needs to monitor vehicle information more consistently, improve the use of exception reports, and monitor take-home vehicles more closely to help ensure that they are being assigned appropriately. Taking these steps will improve the accuracy of fleet information and will help assure that state vehicles are used appropriately. The Utah Code provides DFO with adequate authority to provide the controls and accountability to

effectively manage the state fleet. Utah Code 63A-9-401(1) states that the division shall perform all administrative duties and functions related to management of state vehicles.

But, no, Lee and Richins insist that DFO merely receives data from the agencies, it does not check that data or enforce the rules. Which has left Swallow and Shurtleff before him to manage their fleets as they choose.

## Keep on Truckin’

Another closely-guarded secret is why the AG’s Office needs so many trucks.

What justification was used to upgrade to trucks over default compact passenger cars? “All trucks assigned to the Attorney General’s Office are unmarked vehicles,” Richins says. “The specific justification for the use of the trucks is protected information by the Attorney General’s Office.”

The AG has eleven pickup trucks not counting another six four-wheel-drive sport utility vehicles plus a full-size cargo van. One of the trucks is a ¾ ton, four-wheel-drive. Six are full-size, crew cab models.

Asked why the AG had so many trucks, many of them four wheel drive and quad cab, Lee said, “I would not want to reveal any of their uses for investigations or other reasons. I would simply state it’s part of their business use within their office.”



**The AG’s preference for quad cab trucks over compact cars for undercover work. Justified or not?**

Q. Aren’t you the one who helps monitor that and decide whether someone needs a four-wheel drive vehicle. Doesn’t there have to be a need?

Lee: Yes there does.

Q. So what is the need for the AG’s office?

Lee: Well, for example, as part of their investigations they may have to take evidence from a home and so they have equipment and trucks and the ability to take evidence away from whatever they are investigating.

Q. That might explain two-wheel drive trucks. What about four-wheel drive?

Lee: I don’t know their day-to-day operation. They do have to justify that at replacement time. The process for us at replacement time is we ask them to provide a justification for the use of the vehicle. Our default replacement is actually a compact sedan. So anything other than a compact sedan the agency has to provide a justification for that. They are not going to reveal the details of what they are doing because it is part of their investigation and undercover use. All they are simply going to say is undercover and investigational use. That is what they will say.

Q. Seven trucks are crew cabs. What is the purpose for that?

Lee: I would just reference you back to the Attorney General’s Office. I don’t know the detailed use of particular vehicle. At replacement time they would have to justify that. Stating why they need that. But of the day-to-day use I don’t know.

In other words, all Swallow has to do to get a truck is to tell Sam Lee he needs one for undercover work.

The law does permit the AG and other law enforcement agencies to keep some vehicle information close to the chest to keep bad guys from knowing whether they're being surveilled. But the rules are silent as to whether an agency director can invoke secrecy to qualify for vehicle larger than compact sedans.

Some of the undercover trucks may be assigned but neither the AG's Office nor DFO is providing any detail. "I'm not inclined to release the names of any drivers because the Attorney General does not want to publicly say who is working undercover, who is in a particular vehicle as part of their business need to conduct an investigation," Lee said. "I'm not planning to release any information connected to a take-home driver that is associated with Attorney General's office"

During the interview I asked about the trip logs that the law requires take-home drivers to fill out every day:

Q. The trip logs for the take-home vehicles, how often do they turn those in?

Lee: Those are held at the agency level. Those are not recorded with the operations.

Q. Do you get those?

Lee: No I don't. I record mileage through the fuel card. Where I receive mileage updates. But the trip logs are held locally at the agency level.

Q. Do you ever review those?

Lee: I don't. We review mileage. We have a very formal utilization review. We're not getting down to the individual trip level for our office.

Lee describes a "practical use" justification and a "commute privilege" justification. He says, "The reasons we would accept for take-home would be that the employee may leave from their home location and work throughout the day, visiting various sites, so they don't necessarily need to go to the office before they would begin their work day. We refer to that as practical use. If an employee begins their workday as they leave from home then that's practical use."

Then, he said, "There's a *commute privilege* and that's granted by the executive director and it's just strictly a privilege for travelling to and from work in a state vehicle. If they have commute privilege that is simply the privilege of taking the vehicle home because the director has granted that privilege."

Sam said there is no requirement for the getting the take-home privilege other than the director, John Swallow in the case of the AG's office, granting it.

Q. Are you saying in this case it would be John Swallow?

Lee: That's right.

Q. So any agency director can grant take-home or commute privileges to anybody that they want?

Lee: That's correct.

Q. What is the authority for that? The chapter and verse. The rule or the policy that gives them that authority.

Lee: Off the top of my head I don't know. I'd have to look it up.

Q. One of the rules says if they do the work at home or on the road they have to work at home or on the road 80% of the time so you would only find those individuals in the office 20% of the time. Is that correct?

Lee: Well do I know that? Is that what you're asking?

Q. Yes, is 80% a figure that stands out as being part of a rule?

Lee: It's up to the agency to grant that and decide what is appropriate.

Q. So the agency head can say if your work outside the office 5% of the time it does not matter because they can make that decision.

Lee: Yes.

Q. Is that correct?

Lee: At their level they grant the privilege.

A rule does use the 80% figure: R27-3-7, Criteria for Commute or Take Home Privilege Approval. It says, in part, that one way commuter status can be given is "where an agency clearly demonstrates an employee is required to work at home or out of a vehicle a minimum of 80% of the time and the assigned vehicle is required to perform critical duties in a manner that is clearly in the best interest of the state." Lee, however, believes 5% is sufficient.

But hold on, there is a wrinkle.

In 2007 the legislature enacted a law, UCA 67-5-22 that "allows the attorney general to authorize personal use of state vehicles for up to 28 law enforcement officers employed in the Office of the Attorney General."

Does that mean Swallow can assign, at a minimum, take-home status to up to 28 law enforcement agents without any further justification?

Fleet records show 40 now have at least take-home status. If those are granted under UCA 67-5-22 then the office is 12 over the limit. The AG isn't saying.

And what does "personal use" mean in the law? Does it mean those who get the status can use the cars for anything they want, just like John Swallow can. Legally.

Representative Kay McCiff who was the house sponsor of the bill says he has no clear recollection of the measure, but he believes it permitted investigators who are assigned cars to only commute. "Driving back and forth to home, is that business, state use or personal use?" McCiff said. "It's kind of personal use, it gets you to work. Do I think it would expand to include a pleasure trip? Probably not."

DFO director Lee says no one in the AG's office is approved for personal use other than one person—John Swallow. But Lee was unaware of any legislative action that limits car assignments to 28 AG investigators.

Lee says he is familiar with the 2005 performance audit, the last one done on fleet management. But he chooses not to follow its admonition that he should check for violations. Lee confines his oversight to requiring annual documentation of those receiving the take-home benefit. Whether they qualify under the law is left to agency directors like Swallow. Whether they abuse the privilege is also left for Swallow to detect.

Q. So is it fair to say that at no time since you have been director that you've taken a report and said let's go to the field and check this out. Let's see if this employee really is authorized or meets the requirements.

Lee: I've documented authorization from the director. That is the authorization.

Q. So as long as they provide that, it could be abused and misused, but that falls on the director, that would be their problem.

Lee: Well, I'm saying that's the approval level that we require.

Q. List all violations of state vehicle law and rules committed by the AG's office since 2005. Do you know of a single time anyone in the AG's office has violated this privilege or rule.

Lee. I am not aware of one, no.

So what are the consequences if the attorney general is caught with his hand deep in the vehicle fleet cookie jar? The rule says, “Commute or take home use that is unauthorized shall result in the suspension or revocation of the commute use privilege by the agency. Additional instances of unauthorized commute or take home use may result in the suspension or revocation of the state driving privilege by the agency.”

Consequences for Swallow personally, however, could be graver. If prosecutors who are investigating Utah’s current and former attorney general cast a wide net, part of it may ensnare Shurtleff’s and Swallow’s liberal fleet management practices. Utah law prohibits public officers from using their positions to secure privileges for themselves or others. One penalty for elected officials is removal from office; regular employees can be fired.

Criminal penalties are also possible. It can be a second-degree felony if the assistance exceeds \$1,000.

“Official misconduct” can also constitute an offense if, for example a public servant “with an intent to benefit himself or another...he knowingly commits an unauthorized act which purports to be an act of his office.”

Misusing public money can also violate Utah law. It’s an offense for someone to appropriate public money “to his own use or benefit or benefit or to the use or benefit of another without authority of law.”

So far neither the Attorney General’s Office nor the Division of Fleet Operations has provided any records regarding the AG’s use of state vehicles. Most of the records for this report came from the legislative auditor’s office and legislative analyst’s office. While the DFO has answered some questions and not others, the AG’s spokesman declines answering most.

Until more facts surface there is no certainty Swallow is violating the state’s fleet rules and laws. The devil is in the details. But given what few facts have emerged, coupled with the AG’s and DFO’s reluctance to release records and answer questions, there is a likelihood of wholesale violations: The AG likely has trucks that are not justified; some employees likely have take-home status who do not qualify; the number of approved commuters likely exceeds legislative authority; some employees with take-home status likely have not been keeping daily trip logs; some employees with take-home status are also likely using their vehicles for unauthorized personal use and Swallow himself likely has failed to police his agency’s vehicle use.

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*Editor’s note. This report on the attorney general’s motor pool was planned to appear in one part. But given the stonewalling—the refusal to answer questions and release records on the part of the Governor’s Office, Division of Fleet Operations and Attorney General’s Office— there will be a part two.*

*While government officials have a moral duty to answer questions and explain their conduct there is no law that compels them to do so. Waterboarding is illegal. But under GRAMA law they are at least required to disclose public records. If those are not forthcoming packerchronicle.com will appeal. Stand by for the results.*