



STATE OF ILLINOIS

# EXECUTIVE ETHICS COMMISSION

## Talk is Cheap ... Unless You Don't Report it!

Navigating the Requirements and Procedures for  
Ex Parte and Procurement Communication Reporting  
under the Ethics Act and Procurement Code

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# Ex Parte Communications

## STATE OFFICIALS AND EMPLOYEES ETHICS ACT

Ex Parte Communications; Special Government Agents.  
5 ILCS 430/5-50

Penalties.  
5 ILCS 430/50-5

## ADMINISTRATIVE PROCEDURE ACT

Ex Parte Communications in Rulemaking; Special Government Agents.  
5 ILCS 100/5-165

Ex Parte Communications.  
5 ILCS 100/10-60

# Ex Parte Communications

## **GOVERNMENTAL ETHICS ACT**

Persons Required to File.  
5 ILCS 420/4A-101

## **CRIMINAL CODE OF 2012**

Official Misconduct.  
720 ILCS 5/33-3

## **ILLINOIS ADMINISTRATIVE CODE**

Ex Parte Communications  
2 ILL. ADMIN. CODE 1620.820

# Ex Parte Communications Who Must Report?

## Communications with Agency, Head of Agency, or Employees:

1. regarding potential action concerning regulatory, quasi-adjudicatory, investment, or licensing matters
  - applies only to agencies listed in subsection (e)
  - any written or oral communication by any person that imparts or requests material information or makes a material argument regarding potential action concerning regulatory, quasi-adjudicatory, investment, or licensing matters pending before or under consideration by the agency.

5 ILCS 430/5-50(b)

# Ex Parte Communications Who Must Report?

## Communications with Agency, Head of Agency, or Employees:

2. regarding potential action concerning an agency's general, emergency, or preemptory rulemaking
  - applies to all agencies engaged in rulemaking under the Administrative Procedure Act
  - any written or oral communication by any person during the rulemaking period that imparts or requests material information or makes a material argument regarding potential action concerning an agency's general, emergency, or preemptory rulemaking under this Act . . . .

5 ILCS 100/5-165

# Ex Parte Communications

## What is a Reportable Communication?

To require reporting, a communication must:

1. Be material
2. Be regarding a potential action
3. Concerning:
  - i. a matter pending before or under consideration by the Agency
  - ii. an agency's general, emergency or preemptory rulemaking under the Administrative Procedure Act

5 ILCS 430/5-50(b)  
5 ILCS 100/5-165(b)

# Ex Parte Communications

## What is a Reportable Communication?

### 1. What is Material?

“Material information” and “Material argument” are not defined in the Statute or the Administrative Rules for the purpose of the Ex Parte Communication Requirements.



Reasonable Person Standard

Things to Consider:

- the likelihood that the information would influence a the pending potential action of the Agency.

# Ex Parte Communications

## What is a Reportable Communication?

### 2. What is a Potential Action?

“Potential Action” is also not defined in the Statute or the Administrative Rules for the purpose of the Ex Parte Communication Requirements.



Reasonable Person Standard

Things to Consider:

- Is the potential action one that a reasonable person would believe could affect the initiation, development, or outcome of the matter pending or being considered at the Agency?

# Ex Parte Communications

## What is a Reportable Communication?

3. What is the Potential Action Concerning?
  - i. Is this a matter pending before or under consideration by the Agency?

Things to Consider:

- Is the matter pending? What are the usual means (petition, complaint, adding to the agenda, etc.) of officially placing a matter before the Agency for a determination?
- Is the matter under consideration? Suggests a period of time before or separate from when a matter is officially pending.

# Ex Parte Communications

## What is a Reportable Communication?

3. What is the Potential Action Concerning?
  - ii. Is this the Agency's general, emergency or preemptory rulemaking under the Administrative Procedure Act?

Things to Consider:

- Is the Agency within the Rulemaking period? The rulemaking period begins upon the commencement of the first notice period with respect to general rulemaking under Section 5-40, upon the filing of a notice of emergency rulemaking under Section 5-45, or upon the filing of a notice of rulemaking with respect to preemptory rulemaking under Section 5-50.

5 ILCS 100/5-165(b)

# Ex Parte Communications

## What Is Not Reportable Communication?

Communications that do not have to be reported include the following:

1. statements by a person publicly made in a public forum;
2. statements regarding matters of procedure and practice, such as format, the number of copies required, the manner of filing, and the status of the matter or rulemaking proceeding; and
3. statements made by a State employee of the agency to the agency head or other employees of that agency.

5 ILCS 430/5-50(b)

5 ILCS 100/5-165(b)

# Ex Parte Communications

## WHAT TO REPORT?

For Non-Rulemaking Ex Parte Communications which must be reported to the EEC, the Ethics Officer shall file:

1. all written communications;
2. all written responses to the communications;
3. a memorandum prepared by the ethics officer stating:
  - i. the date of any ex parte communication;
  - ii. the nature and substance of all oral communications;
  - iii. the identity and job title of the person to whom each communication was made;
  - iv. all responses made;
  - v. the identity and job title of the person making each response;
  - vi. the identity of each person from whom the written or oral ex parte communication was received;
  - vii. the individual or entity represented by that person;
  - viii. any action the person requested or recommended; and
  - ix. any other pertinent information.

5 ILCS 430/5-50(c)

# Ex Parte Communications

## WHAT TO REPORT?

For Rulemaking Ex Parte Communications which must be reported to the EEC, the Ethics Officer shall file:

1. all written communications;
2. all written responses to the communications;
3. a memorandum prepared by the ethics officer stating:
  - i. the date of any ex parte communication;
  - ii. the nature and substance of all oral communications;
  - iii. the identity and job title of the person to whom each communication was made;
  - iv. all responses made;
  - v. the identity and job title of the person making each response;
  - vi. the identity of each person from whom the written or oral ex parte communication was received;
  - vii. the individual or entity represented by that person;
  - viii. any action the person requested or recommended; and
  - ix. any other pertinent information.

# Ex Parte Communications

## WHAT TO REPORT?

Rulemaking Ex Parte Communications of repetitive, bulk public comment (e.g. form letters, petitions), shall be filed by the Ethics Officer in the following manner:

1. Identification of the persons and or entity that authored the comment (if known), with address and phone number;
2. Identification of any other entities in support of or opposition to the rulemaking and of the comment received by the agency;
3. Provision of a sample of the public comment and, where different form letters are used, a sample of each;
4. Submission of a tabulation of the number of persons supporting/opposing each type of public comment received by the agency; and
5. Retention by the agency of all comments received.

2 ILL. ADMIN. CODE 1620.820(d)

# Ex Parte Communications WHERE AND WHEN TO REPORT?

For Rulemaking Communications:

## 1. Make it a Part of the Record

- The ethics officer shall require that the ex parte communication promptly be made a part of the record of the rulemaking proceeding.

5 ILCS 100/5-165(c)

## 2. File it With the EEC

- The State Employee shall report this communication within 7 days to his or her agency's ethics officer.
- An ethics officer who receives a report of ex parte communications shall forward the report to the Commission within 7 days.

2 ILL. ADMIN. CODE 1600.820(a)

# Ex Parte Communications

## WHERE AND WHEN TO REPORT?

For Non-Rulemaking Communications:

1. Is the Communication from an “interested party”?
  - “Interested party” means a person or entity whose rights, privileges, or interests are the subject of or are directly affected by a regulatory, quasi-adjudicatory, investment, or licensing matter.

5 ILCS 430/5-50(d)
  
2. Make it a Part of the Record
  - From an Interested Party?
    - shall promptly be memorialized and made a part of the record.

5 ILCS 430/5-50(b-5)
  - From a non-Interested Party?
    - the ethics officer shall require that the ex parte communication be promptly made a part of the record.

5 ILCS 430/5-50(c)

# Ex Parte Communications WHERE AND WHEN TO REPORT?

For Non-Rulemaking Communications:

3. Does it need to go to the EEC?
  - From an Interested Party? – NO
  - From a non-Interested Party? – YES
    - The State Employee shall report this communication within 7 days to his or her agency's ethics officer.
    - An ethics officer who receives a report of ex parte communications shall forward the report to the Commission within 7 days.

2 ILL. ADMIN. CODE 1600.820(a)

# Ex Parte Communications PENALTIES?

Intentional violation of Section 5-50:

- Guilty of a business offense subject to a fine of at least \$1,001 and up to \$5,000.

5 ILCS 430/50-5(b)

- The EEC may levy an administrative fine of up to \$5,000.

5 ILCS 430/50-5(e)

- Subject to discipline or discharge by the appropriate ultimate jurisdictional authority.

5 ILCS 430/50-5(f)

# Ex Parte Communications PENALTIES?

## Criminal Consequences?

### ➤ Official Misconduct

A public officer or employee or special government agent commits misconduct when, in his official capacity or capacity as a special government agent, he or she commits any of the following acts:

1. Intentionally or recklessly fails to perform any mandatory duty as required by law; or
2. Knowingly performs an act which he knows he is forbidden by law to perform; or
3. With intent to obtain a personal advantage for himself or another, he performs an act in excess of his lawful authority; or
4. Solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law.

# Ex Parte Communications PENALTIES?

## Criminal Consequences?

### ➤ Official Misconduct

A public officer or employee or special government agent convicted of violating any provision of this Section

- forfeits his or her office or employment or position as a special government agent; and
- commits a Class 3 felony.

720 ILCS 5/33-3(c)

# Ex Parte Communications

## NOTE: Prohibition

### Communications with Head of Agency, Employees, and ALJs:

1. in contested cases or licensing matters to which the procedures of a contested case apply
  - agency heads, agency employees, and administrative law judges **shall not**, after notice of hearing in a contested case or licensing to which the procedures of a contested case apply under this Act, communicate, directly or indirectly, in connection with any issue of fact, with any person or party, or in connection with any other issue with any party or the representative of any party, except upon notice and opportunity for all parties to participate.
  - does not apply to the disposition of matters that agencies are authorized by law to entertain or dispose of on an ex parte basis

5 ILCS 100/10-60

# Ex Parte Communications

## What Is NOT Prohibited?

Communications that are NOT prohibited include the following:

- i. communications regarding matters of procedure and practice, such as the format of pleadings, number of copies required, manner of service, and status of proceedings;
- ii. an agency member may communicate with other members of the agency;
- iii. an agency member or administrative law judge may have the aid and advice of one or more personal assistants.

5 ILCS 100/10-60(b), (d)

# **Procurement Communication Reporting**

## **ILLINOIS PROCUREMENT CODE**

**Procurement Communications Reporting**  
**30 ILCS 500/50-39**

## **ILLINOIS ADMINISTRATIVE CODE**

**Communications Related to Procurement**  
**2 ILL. ADMIN. CODE 1620.825**

**Communications Related to Power Procurement by the Illinois Power Agency**

**2 ILL. ADMIN. CODE 1620.826**

**Procurement Communications Reporting (PPB)**  
**2 ILL. ADMIN. CODE 3002.1400**

# Procurement Communication Reporting

## Who Must Report?

### 1. Communications with State Employees

- Any written or oral communication received by a State employee who, by the nature of his or her duties, has the authority to participate personally and substantially in the decision to award a State contract

### 2. Communications with the Illinois Power Agency

- Any person communicating orally, in writing, electronically, or otherwise with the Director or any person employed by, or associated with, the Illinois Power Agency

30 ILCS 500/50-39(a)

# Procurement Communication Reporting

## Who Must Report?

### 3. Communications with Lobbyists

- When an oral communication made by a person required to register under the Lobbyist Registration Act is received by a State employee that is covered under this Section, all individuals who initiate or participate in the oral communication shall submit a written report to that State employee that memorializes the communication and includes the information required to be reported to the Procurement Policy Board.

30 ILCS 500/50-39(c)

# Procurement Communication Reporting

## Who Must Report?

### 3. Communications with Lobbyists

- Any State employee engaging in material communication with a registered lobbyist shall make every attempt to obtain the written statement of the lobbyist regarding the communication that took place, as required by Section 50-39(c) of the Code. Executive Ethics Commission rule 2 ILL. ADMIN. CODE 1620.825(b)(1) defines materiality.
- Should the lobbyist fail to provide the State employee with a written report within 30 days, the employee shall attach a document stating the dates of attempted request for information and affirmation he/she made every attempt to obtain the required lobbyist report. This document shall be provided, in place of the lobbyist report required by Section 50-39(c) of the Code, to the Illinois Procurement Policy Board.

2 ILL. ADMIN. CODE 3002.1400(b)

# Procurement Communication Reporting

## What is a Reportable Communication?

To require reporting, a communication must:

- (1) Be material
- (2) Be regarding a potential action
- (3) Concern an active procurement matter

30 ILCS 500/50-39(a)

# Procurement Communication Reporting

## Note: Prohibited Bidders

- The reporting of a communication with a vendor DOES NOT mean that vendor will be prohibited from bidding on any State contract.
- Vendor communications are generally allowed, within certain boundaries.

30 ILCS 500/50-10.5(e)

# Procurement Communication Reporting

## What is a Reportable Communication?

- “Material information” means information that a reasonable person would deem important in determining his or her course of action and pertains to significant issues, including, but not limited to, price, quantity, and terms of payment or performance.
- “Material argument” means a communication that a reasonable person would believe was made for the purpose of influencing a decision relating to a procurement matter.
- “Material argument” does not include general information about products, services, or industry best practices or a response to a communication initiated by an employee of the State for the purposes of providing information to evaluate new products, trends, services, or technologies.

30 ILCS 500/50-39(g)

# Procurement Communication Reporting

## What is a Reportable Communication?

In determining whether a communication is material, the State employee must consider:

1. whether the information conveyed is new or already known to the State agency (or repeated or restated privately) and other participants in the communication; and
2. the likelihood that the information would influence a pending procurement matter.

2 ILL. ADMIN. CODE 1620.825 (b)(1)(C)

# Procurement Communication Reporting

## What is a Reportable Communication?

A “potential action” is one that a reasonable person would believe could affect the initiation, development or outcome of a procurement matter.

2 ILL. ADMIN. CODE 1620.825 (b)(2)

# Procurement Communication Reporting

## What is a Reportable Communication?

- “Active procurement matter” means a procurement process beginning with requisition or determination of need by an agency and continuing through the publication of an award notice or other completion of a final procurement action, the resolution of any protests, and the expiration of any protest or Procurement Policy Board review period, if applicable.
- “Active procurement matter” also includes communications relating to change orders, renewals, or extensions.

35 ILCS 500/50-39

# Procurement Communication Reporting

## What is a Reportable Communication?

“Procurement processes” includes the processes of procuring specific goods, supplies, services, professional or artistic services, construction, leases of real property (whether the State is the lessor or lessee), or capital improvements, and includes master contracts, contracts for financing through use of installment or lease–purchase arrangements, renegotiated contracts, amendments to contracts, and change orders.

2 ILL. ADMIN. CODE 1620.825 (b)(3)

# Procurement Communication Reporting: What is a Reportable Communication?

Active procurement matters include:

Any person communicating orally, in writing, electronically, or otherwise with the Director or any person employed by, or associated with, the Illinois Power Agency to impart, solicit, or transfer any information related to the content of any power procurement plan, the manner of conducting any power procurement process, the procurement of any power supply, or the method or structure of contracting with power suppliers must disclose to the Procurement Policy Board the full nature, content, and extent of any such communication in writing by submitting a report with the following information:

1. The names of any party to the communication.
2. The date on which the communication occurred.
3. The time at which the communication occurred.
4. The duration of the communication.
5. The method (written, oral, etc.) of the communication.
6. A summary of the substantive content of the communication.

2 ILL. ADMIN. CODE 1620.825 (b)(3)

# Procurement Communication Reporting: What is a Reportable Communication?

## Illinois Power Agency Communications:

Any person communicating orally, in writing, electronically, or otherwise with the Director or any person employed by, or associated with, the Illinois Power Agency to impart, solicit, or transfer any information related to the content of any power procurement plan, the manner of conducting any power procurement process, the procurement of any power supply, or the method or structure of contracting with power suppliers must disclose to the Procurement Policy Board the full nature, content, and extent of any such communication in writing by submitting a report with the following information:

1. The names of any party to the communication.
2. The date on which the communication occurred.
3. The time at which the communication occurred.
4. The duration of the communication.
5. The method (written, oral, etc.) of the communication.
6. A summary of the substantive content of the communication.

# Procurement Communication Reporting

## What Is Not Reportable Communication?

Communications that do not have to be reported include the following:

1. statements by a person publicly made in a public forum;
2. statements regarding matters of procedure and practice, such as format, the number of copies required, the manner of filing, and the status of a matter;

# Procurement Communication Reporting

## What Is Not Reportable Communication?

3. statements made by a State employee of the agency to the agency head or other employees of that agency, to the employees of the Executive Ethics Commission, or to an employee of another State agency who, through the communication, is either
  - a) exercising his or her experience or expertise in the subject matter of the particular procurement in the normal course of business, for official purposes, and at the initiation of the purchasing agency or the appropriate State purchasing officer, or
  - b) exercising oversight, supervisory, or management authority over the procurement in the normal course of business and as part of official responsibilities;

# Procurement Communication Reporting

## What Is Not Reportable Communication?

4. unsolicited communications providing general information about products, services, or industry best practices before those products or services become involved in a procurement matter;

# Procurement Communication Reporting

## What Is Not Reportable Communication?

5. communications received in response to procurement solicitations, including, but not limited to, vendor responses to a request for information, request for proposal, request for qualifications, invitation for bid, or a small purchase, sole source, or emergency solicitation, or questions and answers posted to the Illinois Procurement Bulletin to supplement the procurement action, provided that the communications are made in accordance with the instructions contained in the procurement solicitation, procedures, or guidelines;

# Procurement Communication Reporting

## What Is Not Reportable Communication?

6. communications that are privileged, protected, or confidential under law; and
7. communications that are part of a formal procurement process as set out by statute, rule, or the solicitation, guidelines, or procedures, including, but not limited to, the posting of procurement opportunities, the process for approving a procurement business case or its equivalent, fiscal approval, submission of bids, the finalizing of contract terms and conditions with an awardee or apparent awardee, and similar formal procurement processes.

# Procurement Communications Reporting

## What Is Not Reportable Communication?

8. The provisions of this Section shall not apply to communications regarding the administration and implementation of an existing contract.
  - Except communications regarding change orders or the renewal or extension of a contract.

30 ILCS 500/50-39(a)

9. No trade secrets or other proprietary or confidential information shall be included in any communication reported to the Procurement Policy Board.

30 ILCS 500/50-39(b)

# Procurement Communication Reporting What Is Not Reportable Communication?

## Exclusions from the Exclusions

Attempts to influence through duress, coercion or the direct or indirect offer or promise of anything of value to any person or entity in consideration for any benefit or preference in the procurement process.

If the employee reasonably believes a communication was made for any improper purpose, including, but not limited to, providing an improper benefit, monetary or non-monetary, to any person or entity.

2 ILL. ADMIN. CODE 1620.825(d) and (e)

# Procurement Communication Reporting

## WHAT TO REPORT?

Details including:

- Date, time, and duration of each communication;
- Identities of persons and individuals or entities represented, communicating, receiving, and responding;
- Action requested or recommended;
- Summary of the points made;
- Location of all persons involved in the communication;
- Telephone numbers if the communication occurred by telephone;
- Any other pertinent information.

30 ILCS 500/50-39(b)

# Procurement Communication Reporting WHERE AND WHEN TO REPORT?

- Reports are made on the Procurement Policy Board website at  
<http://www2.illinois.gov/ppb/Pages/default.aspx>
- Reportable communications must be reported as soon as practicable,
- but in no event more than 30 days after receipt of the communication,
- or the first in a series of communications.

# Procurement Communication Reporting PENALTIES?

State employees who:

- knowingly and intentionally
- fail to comply with the reporting requirements
- shall be subject to suspension or discharge.

30 ILCS 500/50-39(e)

# Questions?



## Ex Parte Communications

### I. Statutory References

*State Officials and Employees Ethics Act*

(5 ILCS 430/5-50), (5 ILCS 430/50-5)

Sec. 5-50. Ex parte communications; special government agents.

(a) This Section applies to ex parte communications made to any agency listed in subsection (e).

(b) "Ex parte communication" means any written or oral communication by any person that imparts or requests material information or makes a material argument regarding potential action concerning regulatory, quasi-adjudicatory, investment, or licensing matters pending before or under consideration by the agency. "Ex parte communication" does not include the following: (i) statements by a person publicly made in a public forum; (ii) statements regarding matters of procedure and practice, such as format, the number of copies required, the manner of filing, and the status of a matter; and (iii) statements made by a State employee of the agency to the agency head or other employees of that agency.

(b-5) An ex parte communication received by an agency, agency head, or other agency employee from an interested party or his or her official representative or attorney shall promptly be memorialized and made a part of the record.

(c) An ex parte communication received by any agency, agency head, or other agency employee, other than an ex parte communication described in subsection (b-5), shall immediately be reported to that agency's ethics officer by the recipient of the communication and by any other employee of that agency who responds to the communication. The ethics officer shall require that the ex parte communication be promptly made a part of the record. The ethics officer shall promptly file the ex parte communication with the Executive Ethics Commission, including all written communications, all written responses to the communications, and a memorandum prepared by the ethics officer stating the nature and substance of all oral communications, the identity and job title of the person to whom each communication was made, all responses made, the identity and job title of the person making each response, the identity of each person from whom the written or oral ex parte communication was received, the individual or entity represented by that person, any action the person requested or recommended, and any other pertinent information. The disclosure shall also contain the date of any ex parte communication.

(d) "Interested party" means a person or entity whose rights, privileges, or interests are the subject of or are directly affected by a regulatory, quasi-adjudicatory, investment, or licensing matter.

(e) This Section applies to the following agencies:

Executive Ethics Commission  
Illinois Commerce Commission  
Educational Labor Relations Board  
State Board of Elections  
Illinois Gaming Board  
Health Facilities and Services Review Board  
Illinois Workers' Compensation Commission  
Illinois Labor Relations Board  
Illinois Liquor Control Commission  
Pollution Control Board  
Property Tax Appeal Board  
Illinois Racing Board  
Illinois Purchased Care Review Board  
Department of State Police Merit Board  
Motor Vehicle Review Board  
Prisoner Review Board  
Civil Service Commission  
Personnel Review Board for the Treasurer  
Merit Commission for the Secretary of State  
Merit Commission for the Office of the Comptroller  
Court of Claims  
Board of Review of the Department of Employment Security  
Department of Insurance  
Department of Professional Regulation and licensing boards  
under the Department  
Department of Public Health and licensing boards  
under the Department  
Office of Banks and Real Estate and licensing boards  
Under the Office  
State Employees Retirement System Board of Trustees  
Judges Retirement System Board of Trustees  
General Assembly Retirement System Board of Trustees  
Illinois Board of Investment  
State Universities Retirement System Board of Trustees  
Teachers Retirement System Officers Board of Trustees

(f) Any person who fails to (i) report an ex parte communication to an ethics officer, (ii) make information part of the record, or (iii) make a filing with the Executive Ethics Commission as required by this Section or as required by Section 5-165 of the Illinois Administrative Procedure Act violates this Act.

(Source: P.A. 95-331, eff. 8-21-07; 96-31, eff. 6-30-09.)

Sec. 50-5. Penalties.

(a) A person is guilty of a Class A misdemeanor if that person intentionally violates any provision of Section 5-15, 5-30, 5-40, or 5-45 or Article 15.

(a-1) An ethics commission may levy an administrative fine for a violation of Section 5-45 of this Act of up to 3 times the total annual compensation that would have been obtained in violation of Section 5-45.

(b) A person who intentionally violates any provision of Section 5-20, 5-35, 5-50, or 5-55 is guilty of a business offense subject to a fine of at least \$1,001 and up to \$5,000.

(c) A person who intentionally violates any provision of Article 10 is guilty of a business offense and subject to a fine of at least \$1,001 and up to \$5,000.

(d) Any person who intentionally makes a false report alleging a violation of any provision of this Act to an ethics commission, an inspector general, the State Police, a State's Attorney, the Attorney General, or any other law enforcement official is guilty of a Class A misdemeanor.

(e) An ethics commission may levy an administrative fine of up to \$5,000 against any person who violates this Act, who intentionally obstructs or interferes with an investigation conducted under this Act by an inspector general, or who intentionally makes a false, frivolous, or bad faith allegation.

(f) In addition to any other penalty that may apply, whether criminal or civil, a State employee who intentionally violates any provision of Section 5-5, 5-15, 5-20, 5-30, 5-35, 5-45, or 5-50, Article 10, Article 15, or Section 20-90 or 25-90 is subject to discipline or discharge by the appropriate ultimate jurisdictional authority.

(Source: P.A. 96-555, eff. 8-18-09.)

*Illinois Administrative Procedure Act*

(5 ILCS 100/5-165), (5 ILCS 100/10-60)

Sec. 5-165. Ex parte communications in rulemaking; special government agents.

(a) Notwithstanding any law to the contrary, this Section applies to ex parte communications made during the rulemaking process.

(b) "Ex parte communication" means any written or oral communication by any person during the rulemaking period that imparts or requests material information or makes a material argument regarding potential action concerning an agency's general, emergency, or peremptory rulemaking under this Act and that is communicated to that agency, the head of that agency, or any other employee of that agency. For purposes of this Section, the rulemaking period begins upon the commencement of the first notice period with respect to general rulemaking under Section 5-40, upon the filing of a notice of emergency rulemaking under Section 5-45, or upon the filing of a notice of rulemaking with respect to peremptory rulemaking under Section 5-50. "Ex parte communication" does not include the following: (i) statements by a person publicly made in a public forum; (ii) statements regarding matters of procedure and practice, such as the format of public comments, the number of copies required, the manner of filing such comments, and the status of a rulemaking proceeding; and (iii) statements made by a State employee of that agency to the agency head or other employee of that agency.

(c) An ex parte communication received by any agency, agency head, or other agency employee shall immediately be reported to that agency's ethics officer by the recipient of the communication and by any other employee of that agency who responds to the communication. The ethics officer shall require that the ex parte communication promptly be made a part of the record of the rulemaking proceeding. The ethics officer shall promptly file the ex parte communication with the Executive Ethics Commission, including all written communications, all written responses to the communications, and a memorandum prepared by the ethics officer stating the nature and substance of all oral communications, the identity and job title of the person to whom each communication was made, all responses made, the identity and job title of the person making each response, the identity of each person from whom the written or oral ex parte communication was received, the individual or entity represented by that person, any action the person requested or recommended, and any other pertinent information. The disclosure shall also contain the date of any ex parte communication.

(d) Failure to take certain actions under this Section may constitute a violation as provided in Section 5-50 of the State Officials and Employees Ethics Act.

(Source: P.A. 93-615, eff. 11-19-03; 93-617, eff. 12-9-03.)

Sec. 10-60. Ex parte communications.

(a) Except in the disposition of matters that agencies are authorized by law to entertain or dispose of on an ex parte basis, agency heads, agency employees, and administrative law judges shall not, after notice of hearing in a contested case or licensing to which the procedures of a contested case apply under this Act, communicate, directly or indirectly, in connection with any issue of fact, with any person or party, or in connection with any other issue with any party or the representative of any party, except upon notice and opportunity for all parties to participate.

(b) However, an agency member may communicate with other members of the agency, and an agency member or administrative law judge may have the aid and advice of one or more personal assistants.

(c) An ex parte communication received by any agency head, agency employee, or administrative law judge shall be made a part of the record of the pending matter, including all written communications, all written responses to the communications, and a memorandum stating the substance of all oral communications and all responses made and the identity of each person from whom the ex parte communication was received.

(d) Communications regarding matters of procedure and practice, such as the format of pleadings, number of copies required, manner of service, and status of proceedings, are not considered ex parte communications under this Section.

(Source: P.A. 87-823.)

*Illinois Governmental Ethics Act*

(5 ILCS 420/4A-101)

Sec. 4A-101. Persons required to file. The following persons shall file verified written statements of economic interests, as provided in this Article:

(l) Special government agents. A "special government agent" is a person who is directed, retained, designated, appointed, or employed, with or without compensation, by or on behalf of a statewide executive branch constitutional officer to make an ex parte communication under Section 5-50 of the State Officials and Employees Ethics Act or Section 5-165 of the Illinois Administrative Procedure Act.

(Source: P.A. 96-6, eff. 4-3-09; 96-543, eff. 8-17-09; 96-555, eff. 8-18-09; 96-1000, eff. 7-2-10; 97-309, eff. 8-11-11; 97-754, eff. 7-6-12.)

*Criminal Code of 2012, Article 33 Official Misconduct*

(720 ILCS 5/33-3)

Sec. 33-3. Official misconduct.

(a) A public officer or employee or special government agent commits misconduct when, in his official capacity or capacity as a special government agent, he or she commits any of the following acts:

- (1) Intentionally or recklessly fails to perform any mandatory duty as required by law; or
- (2) Knowingly performs an act which he knows he is forbidden by law to perform; or
- (3) With intent to obtain a personal advantage for himself or another, he performs an act in excess of his lawful authority; or
- (4) Solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law.

(b) An employee of a law enforcement agency commits misconduct when he or she knowingly uses or communicates, directly or indirectly, information acquired in the course of employment, with the intent to obstruct, impede, or prevent the investigation, apprehension, or prosecution of any criminal offense or person. Nothing in this subsection (b) shall be construed to impose liability for communicating to a confidential resource, who is participating or aiding law enforcement, in an ongoing investigation.

(c) A public officer or employee or special government agent convicted of violating any provision of this Section forfeits his or her office or employment or position as a special government agent. In addition, he or she commits a Class 3 felony.

(d) For purposes of this Section, "special government agent" has the meaning ascribed to it in subsection (l) of Section 4A-101 of the Illinois Governmental Ethics Act.

(Source: P.A. 98-867, eff. 1-1-15.)

## **II. Administrative Rules**

(2 ILL. ADMIN. CODE 1620)

Title 2: Government Organization  
Subtitle E: Miscellaneous State Agencies  
Chapter VI: Executive Ethics Commission  
Part 1620: Organization, Information, Rulemaking and Hearings

### *Section 1620.820 Ex Parte Communications*

a) Any State officer or employee who receives an ex parte communication from a non-interested party as excluded by Section 5-50(b-5) and Section 5-50(d) of the State Officials and Employee Ethics Act [5 ILCS 5-50(b-5) and (d)] or an ex parte communication from any person that imparts or requests material information or makes a material argument regarding an agency's rulemaking pursuant to Section 5-165 of the Illinois Administrative Procedure Act [5 ILCS 100/5-165] shall report this communication within 7 days to his or her agency's ethics officer.

b) Any ethics officer who receives a report of ex parte communications described in subsection (a) shall forward the report to the Commission within seven days. The report shall include:

- 1) all written ex parte communications, including all written responses to the communications;
- 2) a memorandum prepared by the ethics officer containing:
  - A) the nature and substance of all oral ex parte communications;
  - B) the identity and job title of the person to whom each communication was made;
  - C) all responses made and the identity and job title of the person making each response;
  - D) the identity of each person from whom the written or oral ex parte communication was received and the date of receipt;
  - E) the individual or entity represented by that person;
  - F) any action the person requested or recommended; and
  - G) any other pertinent information. [5 ILCS 430/5-50(c)]

c) Communications regarding matters of practice and procedure as described in Section 10-60(d) of the Illinois Administrative Procedure Act [5 ILCS 100/10-60(d)] are not considered ex parte communications for the purposes of this Part.

d) For reporting of ex parte communications under Section 5-165 of the IAPA, repetitive, bulk public comment (e.g., form letters, petitions) may be reported in the following manner.

- 1) Identification of the persons and or entity that authored the comment (if known), with address and phone number;
- 2) Identification of any other entities in support of or opposition to the rulemaking and of the comment received by the agency;
- 3) Provision of a sample of the public comment and, where different form letters are used, a sample of each;
- 4) Submission of a tabulation of the number of persons supporting/opposing each type of public comment received by the agency; and
- 5) Retention by the agency of all comments received.

e) Reports received under this Section shall be considered by the Commission for possible action pursuant to Section 20-15(2) of the Act. Reports received by the Commission shall be maintained in accordance with the State Records Act [5 ILCS 160].

# Procurement Communications Reporting

## I. Statutory References

*Illinois Procurement Code*

(30 ILCS 500/50-39)

Sec. 50-39. Procurement communications reporting requirement.

(a) Any written or oral communication received by a State employee who, by the nature of his or her duties, has the authority to participate personally and substantially in the decision to award a State contract and that imparts or requests material information or makes a material argument regarding potential action concerning an active procurement matter, including, but not limited to, an application, a contract, or a project, shall be reported to the Procurement Policy Board, and, with respect to the Illinois Power Agency, by the initiator of the communication, and may be reported also by the recipient.

Any person communicating orally, in writing, electronically, or otherwise with the Director or any person employed by, or associated with, the Illinois Power Agency to impart, solicit, or transfer any information related to the content of any power procurement plan, the manner of conducting any power procurement process, the procurement of any power supply, or the method or structure of contracting with power suppliers must disclose to the Procurement Policy Board the full nature, content, and extent of any such communication in writing by submitting a report with the following information:

- (1) The names of any party to the communication.
- (2) The date on which the communication occurred.
- (3) The time at which the communication occurred.
- (4) The duration of the communication.
- (5) The method (written, oral, etc.) of the communication.
- (6) A summary of the substantive content of the communication.

These communications do not include the following: (i) statements by a person publicly made in a public forum; (ii) statements regarding matters of procedure and practice, such as format, the number of copies required, the manner of filing, and the status of a matter; (iii) statements made by a State employee of the agency to the agency head or other employees of that agency, to the employees of the Executive Ethics Commission, or to an employee of another State agency who, through the communication, is either (a) exercising his or her experience or expertise in the subject matter of the particular procurement in the normal course of business, for official purposes, and at the initiation of the purchasing agency or the appropriate State purchasing officer, or (b) exercising oversight, supervisory, or management authority over the procurement in the normal course of business and as part of official responsibilities; (iv) unsolicited communications providing general information about

products, services, or industry best practices before those products or services become involved in a procurement matter; (v) communications received in response to procurement solicitations, including, but not limited to, vendor responses to a request for information, request for proposal, request for qualifications, invitation for bid, or a small purchase, sole source, or emergency solicitation, or questions and answers posted to the Illinois Procurement Bulletin to supplement the procurement action, provided that the communications are made in accordance with the instructions contained in the procurement solicitation, procedures, or guidelines; (vi) communications that are privileged, protected, or confidential under law; and (vii) communications that are part of a formal procurement process as set out by statute, rule, or the solicitation, guidelines, or procedures, including, but not limited to, the posting of procurement opportunities, the process for approving a procurement business case or its equivalent, fiscal approval, submission of bids, the finalizing of contract terms and conditions with an awardee or apparent awardee, and similar formal procurement processes. The provisions of this Section shall not apply to communications regarding the administration and implementation of an existing contract, except communications regarding change orders or the renewal or extension of a contract.

(b) The report required by subsection (a) shall be submitted monthly and include at least the following: (i) the date and time of each communication; (ii) the identity of each person from whom the written or oral communication was received, the individual or entity represented by that person, and any action the person requested or recommended; (iii) the identity and job title of the person to whom each communication was made; (iv) if a response is made, the identity and job title of the person making each response; (v) a detailed summary of the points made by each person involved in the communication; (vi) the duration of the communication; (vii) the location or locations of all persons involved in the communication and, if the communication occurred by telephone, the telephone numbers for the callers and recipients of the communication; and (viii) any other pertinent information. No trade secrets or other proprietary or confidential information shall be included in any communication reported to the Procurement Policy Board.

(c) Additionally, when an oral communication made by a person required to register under the Lobbyist Registration Act is received by a State employee that is covered under this Section, all individuals who initiate or participate in the oral communication shall submit a written report to that State employee that memorializes the communication and includes, but is not limited to, the items listed in subsection (b).

(d) The Procurement Policy Board shall make each report submitted pursuant to this Section available on its website within 7 calendar days after its receipt of the report. The Procurement Policy Board may promulgate rules to ensure compliance with this Section.

(e) The reporting requirements shall also be conveyed through ethics training under the State Officials and Employees Ethics Act. An employee who knowingly and intentionally violates this Section shall be subject to suspension or discharge. The Executive Ethics Commission shall promulgate rules, including emergency rules, to implement this Section.

(f) This Section becomes operative on January 1, 2011.

(g) For purposes of this Section:

"Active procurement matter" means a procurement process beginning with requisition or determination of need by an agency and continuing through the publication of an award notice or other completion of a final procurement action, the resolution of any protests, and the expiration of any protest or Procurement Policy Board review period, if applicable. "Active procurement matter" also includes communications relating to change orders, renewals, or extensions.

"Material information" means information that a reasonable person would deem important in determining his or her course of action and pertains to significant issues, including, but not limited to, price, quantity, and terms of payment or performance.

"Material argument" means a communication that a reasonable person would believe was made for the purpose of influencing a decision relating to a procurement matter. "Material argument" does not include general information about products, services, or industry best practices or a response to a communication initiated by an employee of the State for the purposes of providing information to evaluate new products, trends, services, or technologies.

(Source: P.A. 97-333, eff. 8-12-11; 97-618, eff. 10-26-11; 97-895, eff. 8-3-12; 98-1076, eff. 1-1-15.)

## **II. Administrative Rules**

(2 Ill. Admin. Code 1620)

Title 2: Government Organization  
Subtitle E: Miscellaneous State Agencies  
Chapter VI: Executive Ethics Commission  
Part 1620: Organization, Information, Rulemaking and Hearings

### *Section 1620.825 Communications Related to Procurement*

a) Unless otherwise specified in this Section, any written or oral communication received by a State employee who, by the nature of his or her duties, has the authority to participate personally or substantially in the decision to award a State contract and that imparts or requests material information or makes a material argument regarding potential action concerning an active procurement matter, including but not limited to, an application, a contract or a project, shall be reported to the Procurement Policy Board, and, with respect to the Illinois Power Agency, by the initiator of the communication, and may be reported also by the recipient. [30 ILCS 500/50-39(a)]

1) As soon as practicable, but in no event more than 30 days after receipt of the communication or the first in a series of related communications described in subsection (b), the State employee shall report the communication to the Procurement Policy Board in accordance with the Board's rules.

2) Notwithstanding the requirements of subsection (a), as soon as practicable, but in no event more than 30 days after receipt of a communication described in subsection (b), the initiator of a communication received by an employee of the Illinois Power Agency shall also report, and the recipient of the communication may report, the communications to the Procurement Policy Board in accordance with the Board's rules.

3) No trade secrets or other proprietary or confidential information shall be included in any communication reported to the Procurement Policy Board. [30 ILCS 500/50-39(b)]

b) A communication must be reported if it is material, regarding a potential action, relating to an active procurement matter, and not otherwise excluded from reporting.

1) Materiality

A) "Material information" is information that a reasonable person would deem important in determining his or her course of action. It is information pertaining to significant issues, including, but not limited to, price, quantity and terms of payment or performance. [30 ILCS 500/50-39(g)]

B) A "material argument" is a communication that a reasonable person would believe was made for the purpose of influencing a decision relating to a procurement matter. It does not include general information about products, services or industry best practices, or a response to a communication initiated by an employee of the State for the purpose of providing information to evaluate new products, trends, services or technologies. [30 ILCS 500/50-39(g)]

C) In determining whether a communication is material, the State employee must consider:

- i) whether the information conveyed is new or already known to the State agency (or repeated or restated privately) and other participants in the communication; and
- ii) the likelihood that the information would influence a pending procurement matter.

2) A "potential action" is one that a reasonable person would believe could affect the initiation, development or outcome of a procurement matter.

3) "Active procurement matter" means a procurement process beginning with the requisition or determination of need by an agency and continuing through the publication of an award notice or other completion of a final procurement action, the resolution of any protests, and the expiration of any protest or Procurement Policy Board review period, if applicable. The Chief Procurement Officer may designate a document for an agency to use in documenting a determination of need. "Active procurement matter" also includes communications relating to change orders, renewals or extensions. [30 ILCS 500/50-39(g)] "Procurement processes" includes the processes of procuring specific goods, supplies, services, professional or artistic services, construction, leases of real property (whether the State is the lessor or lessee), or capital improvements, and includes master contracts, contracts for financing through use of installment or lease-purchase arrangements, renegotiated contracts, amendments to contracts, and change orders. Active procurement matters include:

A) drafting, reviewing or preparing specifications, plans or requirements, including determining the method of source selection;

B) drafting, reviewing or preparing any Invitations for Bid, Requests for Information, Requests for Proposals, sole source procurement justifications, emergency procurement justifications or selection information;

C) evaluating bids, responses and offers, other communications among an evaluation team and any technical advisors to the team relating to the evaluation of a procurement not yet awarded;

D) letting or awarding a contract;

E) resolving protests;

F) determining inclusion on prequalification lists or prequalification in general;

G) identifying potential conflicts of interest or voiding or allowing a contract, bid, offer or subcontract for a conflict of interest;

H) allowing a conflict or subcontract pursuant to Section 50-60 of the Illinois Procurement Code [30 ILCS 500]; and

I) determining, drafting, preparing, executing, denying or approving change orders or the renewal or extension of an existing contract.

c) This Section does not apply to the following communications:

1) Statements by a person publicly made in a public forum. However, communications made in a public forum, if made again privately, must be reported;

2) Statements regarding matters of procedure and practice, such as format, the number of copies required, the manner of filing, and the status of a matter;

3) Communications regarding the administration and implementation of an existing contract, except communications regarding change orders or the renewal or extension of an existing contract.

4) Statements made by a State employee to:

A) the State employee's agency head;

B) other employees of that agency;

C) employees of the Executive Ethics Commission; or

D) an employee of another State agency who, through the communication, is either:

i) exercising his or her experience or expertise in the subject matter of the particular procurement in the normal course of business, for official purposes, and at the initiation of the purchasing agency or the appropriate State Purchasing Officer; or

ii) exercising oversight, supervisory or management authority over the procurement in the normal course of business and as part of official responsibilities.

5) Unsolicited communications providing general information about products, services or industry best practices, before those products or services become involved in a procurement matter.

6) Communications received in response to procurement solicitations pursuant to the Illinois Procurement Code, including, but not limited to, vendor responses to a Request for Information, Request for Proposal, Request for Qualifications, Invitation for Bid or a small purchase, sole source or emergency solicitation, or questions and answers posted to the Procurement Bulletin to supplement the procurement action, provided that the communications are made in accordance with the instructions contained in the procurement solicitation, procedures or guidelines.

7) Communications that are privileged, protected or confidential under law.

8) Communications that are part of a formal procurement process as set out by statute, rule or the solicitation, guidance or procedures, including, but not limited to, the posting of procurement opportunities, the processes for approving a procurement business case or its equivalent, fiscal approval, submission of bids, the finalizing of contract terms and conditions with an awardee or apparent awardee, and similar formal procurement processes. [30 ILCS 500/50-39(a)]

d) Notwithstanding any exemption provided in subsection (c), a State employee must report any communication that imparts or requests material information or makes a material argument regarding a potential action concerning an active procurement matter if that communication attempts to influence through duress, coercion or the direct or indirect offer or promise of anything of value to any person or entity in consideration for any benefit or preference in the procurement process.

e) Notwithstanding any exemption provided in subsection (c), a State employee must report any communication that imparts or requests material information or makes a material argument regarding a potential action concerning an active procurement matter if the employee reasonably believes the communication was made for any improper purpose, including, but not limited to, providing an improper benefit, monetary or non-monetary, to any person or entity.

f) This Section does not apply to communications concerning procurements that are exempt from the Illinois Procurement Code.

g) For purposes of this Section, "State employee" means:

1) any person employed full-time, part-time or pursuant to a personal services contract and whose employment duties are subject to the direction and control

of an employer with regard to the material details of how the work is to be performed;

2) any appointed or elected commissioner, trustee, director or board member of a board of a State agency; or

3) any other person appointed to a position in or with a State agency, regardless of whether the position is compensated.

h) For purposes of this Section, "public forum" includes any meeting that satisfies the notice requirements contained in Section 2.02 of the Open Meetings Act [5 ILCS 120/2.02], but also includes other public events that are advertised and generally open to the public. A meeting may be a public forum even if a reasonable fee is required, such as educational seminars and conferences.

(Source: Amended at 37 Ill. Reg. 19561, effective November 22, 2013)

*Section 1620.826 Communications Related to Power Procurement by the Illinois Power Agency*

a) This Section implements Section 50-39 of the Illinois Procurement Code concerning communications with the Illinois Power Agency relating to power procurement.

b) For purposes of this Section, the identified terms have the following definitions:

1) "Illinois Power Agency" or "IPA" means the agency created by Section 1-15 of the Illinois Power Agency Act [20 ILCS 3855/1-15];

2) "Illinois Power Agency employee" means:

A) any person employed full-time, part-time or pursuant to a personal services contract with IPA and whose employment duties are subject to the direction and control of the IPA Director or staff with regard to the material details of how the work is to be performed;

B) the Director of IPA;

C) or any person associated with IPA as an independent contractor performing services or providing goods pursuant to terms specified by contract with IPA, including employees of any such independent contractor.

3) "Content of any power procurement plan" means the substance of the power procurement plan provided in the Illinois Power Agency Act (IPA Act) [20 ILCS 3855] and Sections 16-111.5 and 16-111.5B of the Public Utilities Act (PUA) [220 ILCS 5/16-111.5 and 16-111.5B].

4) "Manner of conducting a power procurement process" means the method of carrying out and administering the procurement process provided in Section 1-75 of the IPA Act and Section 16-111.5 of the PUA.

5) "Method or structure of contracting with power suppliers" means the system or composition of agreeing with a provider of electricity or related services, including renewable resources, for procurements administered by IPA, whether or not IPA is a party to the contract.

6) "Procurement of a power supply" means the acquisition of electricity or related services, including renewable resources, on behalf of participating utilities or IPA. A procurement of a power supply commences when IPA begins efforts, formal or informal, on the power procurement plan provided in the IPA Act and Section 16-111.5 of the PUA or, for procurements of renewable energy resources, pursuant to Section 1-56 of the IPA Act, and continues through the conclusion of the procurement process provided in Sections 1-75 and 1-56 of the IPA Act and Section 16-111.5 of the PUA, and includes any alternate procedures adopted by the Director pursuant to Section 20-10(i) of the Illinois Procurement Code.

7) "Public forum" includes any meeting that satisfies the notice requirements of Section 2.02 of the Open Meetings Act [5 ILCS 120/2.02], but also includes other public events that are advertised and generally open to the public. A meeting may be a public forum even if a reasonable fee is required, such as educational seminars and conferences.

8) "Participating utility" means a utility that is required to or elects to participate in the IPA procurement process pursuant to Section 16-111.5(a) of the PUA.

c) Any person communicating orally, in writing, electronically, or otherwise with the Illinois Power Agency to impart, solicit, or transfer any information related to the content of any power procurement plan, the manner of conducting any power procurement process, the procurement of any power supply, or the method or structure of contracting with power suppliers must disclose to the Procurement Policy Board the full nature, content and extent of any such communication.

d) The disclosure required under this Section shall be filed, in writing, as soon as practicable, but in no event more than 30 days after receipt of the communication. The report shall include the following information:

- 1) The names of any party to the communication.
- 2) The date on which the communication occurred.
- 3) The time at which the communication occurred.
- 4) The duration of the communication.

5) The method (written, oral, etc.) of the communication.

6) A summary of the substantive content of the communication. [30 ILCS 500/50-39(a)]

e) No trade secrets or other proprietary or confidential information shall be included in any communication reported to the Procurement Policy Board. [30 ILCS 500/50-39(b)]

f) This Section does not apply to the following communications:

1) Statements by a person publicly made in a public forum. However, communications made in a public forum, if made again privately, must be reported.

2) Statements regarding matters of procedure and practice, such as format, the number of copies required, the manner of filing, and the status of a matter.

3) Communications regarding the administration and implementation of an existing contract, except communications regarding change orders or the renewal or extension of an existing contract. [30 ILCS 500/50-39(a)]

4) Statements made by an IPA employee to:

A) the Director of IPA;

B) other employees of IPA;

C) persons associated with IPA as an independent contractor performing services or providing goods pursuant to terms specified by contract with the agency;

D) a commissioner or employee of the Executive Ethics Commission exercising oversight of IPA as part of official responsibilities; or

E) a commissioner or employee of the Illinois Commerce Commission (ICC), when the communications are part of the procurement process provided in Section 1-75 of the IPA Act and Sections 16-111.5 and 16-111.5B of the PUA.

5) Communications that are privileged, protected or confidential under law. [30 ILCS 500/50-39(a)]

6) Communications that are required as part of formal processes set out by statute, rule or solicitation, guidelines or procedures, including, but not limited to, the process for determining the content of any power procurement plan, the manner of conducting any power procurement process, the procurement of any power supply, or the method or structure of contracting with power suppliers,

provided that the communications are made in accordance with the instructions contained in the statute, rule, solicitation, guidance or procedures.

7) Unsolicited communications providing general information about products, services or industry best practices, before those products or services become involved in a procurement matter. [30 ILCS 500/50-39(a)]

8) Communications that are submitted and published on IPA's and ICC's websites in accordance with statute or rules.

g) Notwithstanding any exemption provided in subsection (f), a person must report any communication subject to this Section if that communication attempts to influence through duress, coercion or the direct or indirect offer or promise of anything of value to any person or entity for any benefit or preference in the power procurement process.

h) Notwithstanding any exemption provided in subsection (f), a person must report any communication subject to this Section if the person reasonably believes the communication was made for any improper purpose, including, but not limited to, providing an improper benefit, monetary or non-monetary, to any person or entity.

i) This Section does not apply to communications concerning the hiring of procurement administrators or procurement planning consultants pursuant to Section 1-75 of the IPA Act.

(Source: Added at 37 Ill. Reg. 19561, effective November 22, 2013)

(2 ILL. ADMIN. CODE 3002)

Title 2: Government Organization  
Subtitle E: Miscellaneous State Agencies  
Chapter VI: Procurement Policy Board  
Part 1620: General Policies

*Section 3002.1400 Procurement Communications Reporting*

As required by Section 50-39 of the Procurement Code, any State employee, as defined in 2 Ill. Adm. Code 1620.825(g), who receives a written or oral communication that imparts or requests material information or makes a material argument regarding potential action concerning a procurement matter, including, but not limited to, an application, a contract, or a project, shall report the communication to the Procurement Policy Board. "Material" is defined by 2 Ill. Adm. Code 1620.825(b)(1).

a) Upon receipt of a communication described in and required to be reported pursuant to 2 Ill. Adm. Code 1620.825, the State employee shall report the communication to the Procurement Policy Board using the electronic Procurement Communications Reporting

System available on the Procurement Policy Board's official website at <http://pcrs.illinois.gov>. Reports shall be filed monthly and include at least the following:

- 1) the date and time of each communication;
- 2) the identity of each person from whom the written or oral communication was received, the individual or entity represented by that person, and any action that person requested or recommended;
- 3) the identity and job title of the person to whom each communication was made;
- 4) if a response is made, the identity and job title of the person making each response;
- 5) a detailed summary of the points made by each person involved in the communication;
- 6) the duration of the communication;
- 7) the location or locations of all persons involved in the communication and, if the communication occurred by telephone, the telephone numbers for the callers and recipients of the communication; and
- 8) any other pertinent information. The Procurement Policy Board shall publish each report submitted to its website within 7 days. A State employee who knowingly and intentionally violates this requirement shall be subject to suspension or discharge. If a violation is known or suspected, the Procurement Policy Board will turn each suspected report over to the Office of the Executive Inspector General.

b) Any State employee engaging in material communication with a registered lobbyist shall make every attempt to obtain the written statement of the lobbyist regarding the communication that took place, as required by Section 50-39(c) of the Code. Executive Ethics Commission rule 2 Ill. Adm. Code 1620.825(b)(1) defines materiality. Should the lobbyist fail to provide the State employee with a written report within 30 days, the employee shall attach a document stating the dates of attempted request for information and affirmation he/she made every attempt to obtain the required lobbyist report. This document shall be provided, in place of the lobbyist report required by Section 50-39(c) of the Code, to the Illinois Procurement Policy Board. Each State employee shall provide this form in portable document format (PDF) attached specifically to the lobbyist communication in question within the 30 day window following any communication with a registered lobbyist.

(Source: Added at 35 Ill. Reg. 7209, effective April 19, 2011)