

2016 Ethics Officer Conference
Anatomy of an Ethics Investigation
April 5, 2016
Statutes and Rules

(5 ILCS 430/20-50)

Sec. 20-50. Investigation reports.

(a) If an Executive Inspector General, upon the conclusion of an investigation, determines that reasonable cause exists to believe that a violation has occurred, then the Executive Inspector General shall issue a summary report of the investigation. The report shall be delivered to the appropriate ultimate jurisdictional authority and to the head of each State agency affected by or involved in the investigation, if appropriate. The appropriate ultimate jurisdictional authority or agency head shall respond to the summary report within 20 days, in writing, to the Executive Inspector General. The response shall include a description of any corrective or disciplinary action to be imposed.

(b) The summary report of the investigation shall include the following:

(1) A description of any allegations or other information received by the Executive Inspector General pertinent to the investigation.

(2) A description of any alleged misconduct discovered in the course of the investigation.

(3) Recommendations for any corrective or disciplinary action to be taken in response to any alleged misconduct described in the report, including but not limited to discharge.

(4) Other information the Executive Inspector General deems relevant to the investigation or resulting recommendations.

(c) Within 30 days after receiving a response from the appropriate ultimate jurisdictional authority or agency head under subsection (a), the Executive Inspector General shall notify the Commission and the Attorney General if the Executive Inspector General believes that a complaint should be filed with the Commission. If the Executive Inspector General desires to file a complaint with the Commission, the Executive Inspector General shall submit the summary report and supporting documents to the Attorney General. If the Attorney General concludes that there is insufficient evidence that a violation has occurred, the Attorney General shall notify the Executive Inspector General and the Executive Inspector General shall deliver to the Executive Ethics Commission a copy of the summary report and response from the ultimate jurisdictional authority or agency head. If the Attorney General determines that reasonable cause exists to believe that a violation has occurred, then the Executive Inspector General, represented by the Attorney General, may file with the Executive Ethics Commission a complaint. The complaint shall set forth the alleged violation and the grounds that exist to support the complaint. The complaint must be filed with the Commission within 18 months after the

most recent act of the alleged violation or of a series of alleged violations except where there is reasonable cause to believe that fraudulent concealment has occurred. To constitute fraudulent concealment sufficient to toll this limitations period, there must be an affirmative act or representation calculated to prevent discovery of the fact that a violation has occurred. If a complaint is not filed with the Commission within 6 months after notice by the Inspector General to the Commission and the Attorney General, then the Commission may set a meeting of the Commission at which the Attorney General shall appear and provide a status report to the Commission.

(c-5) Within 30 days after receiving a response from the appropriate ultimate jurisdictional authority or agency head under subsection (a), if the Executive Inspector General does not believe that a complaint should be filed, the Executive Inspector General shall deliver to the Executive Ethics Commission a statement setting forth the basis for the decision not to file a complaint and a copy of the summary report and response from the ultimate jurisdictional authority or agency head. An Inspector General may also submit a redacted version of the summary report and response from the ultimate jurisdictional authority if the Inspector General believes either contains information that, in the opinion of the Inspector General, should be redacted prior to releasing the report, may interfere with an ongoing investigation, or identifies an informant or complainant.

(c-10) If, after reviewing the documents, the Commission believes that further investigation is warranted, the Commission may request that the Executive Inspector General provide additional information or conduct further investigation. The Commission may also appoint a Special Executive Inspector General to investigate or refer the summary report and response from the ultimate jurisdictional authority to the Attorney General for further investigation or review. If the Commission requests the Attorney General to investigate or review, the Commission must notify the Attorney General and the Inspector General. The Attorney General may not begin an investigation or review until receipt of notice from the Commission. If, after review, the Attorney General determines that reasonable cause exists to believe that a violation has occurred, then the Attorney General may file a complaint with the Executive Ethics Commission. If the Attorney General concludes that there is insufficient evidence that a violation has occurred, the Attorney General shall notify the Executive Ethics Commission and the appropriate Executive Inspector General.

(d) A copy of the complaint filed with the Executive Ethics Commission must be served on all respondents named in the complaint and on each respondent's ultimate jurisdictional authority in the same manner as process is served under the Code of Civil Procedure.

(e) A respondent may file objections to the complaint within 30 days after notice of the petition has been served on the respondent.

(f) The Commission shall meet, either in person or by telephone, at least 30 days after the complaint is served on

all respondents in a closed session to review the sufficiency of the complaint. The Commission shall issue notice by certified mail, return receipt requested, to the Executive Inspector General, Attorney General, and all respondents of the Commission's ruling on the sufficiency of the complaint. If the complaint is deemed to sufficiently allege a violation of this Act, then the Commission shall include a hearing date scheduled within 4 weeks after the date of the notice, unless all of the parties consent to a later date. If the complaint is deemed not to sufficiently allege a violation, then the Commission shall send by certified mail, return receipt requested, a notice to the Executive Inspector General, Attorney General, and all respondents of the decision to dismiss the complaint.

(g) On the scheduled date the Commission shall conduct a closed meeting, either in person or, if the parties consent, by telephone, on the complaint and allow all parties the opportunity to present testimony and evidence. All such proceedings shall be transcribed.

(h) Within an appropriate time limit set by rules of the Executive Ethics Commission, the Commission shall (i) dismiss the complaint, (ii) issue a recommendation of discipline to the respondent and the respondent's ultimate jurisdictional authority, (iii) impose an administrative fine upon the respondent, (iv) issue injunctive relief as described in Section 50-10, or (v) impose a combination of (ii) through (iv).

(i) The proceedings on any complaint filed with the Commission shall be conducted pursuant to rules promulgated by the Commission.

(j) The Commission may designate hearing officers to conduct proceedings as determined by rule of the Commission.

(k) In all proceedings before the Commission, the standard of proof is by a preponderance of the evidence.

(l) Within 30 days after the issuance of a final administrative decision that concludes that a violation occurred, the Executive Ethics Commission shall make public the entire record of proceedings before the Commission, the decision, any recommendation, any discipline imposed, and the response from the agency head or ultimate jurisdictional authority to the Executive Ethics Commission.

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

(5 ILCS 430/20-51)

Sec. 20-51. Closed investigations. When the Inspector General concludes that there is insufficient evidence that a violation has occurred, the Inspector General shall close the investigation. The Inspector General shall provide the Commission with a written statement of the Inspector General's decision to close the investigation. At the request of the subject of the investigation, the Inspector General shall provide a written statement to the subject of the investigation of the Inspector General's decision to close the

investigation. Closure by the Inspector General does not bar the Inspector General from resuming the investigation if circumstances warrant. The Commission also has the discretion to request that the Executive Inspector General conduct further investigation of any matter closed pursuant to this Section, to appoint a Special Executive Inspector General to investigate, or to refer the allegations to the Attorney General for further investigation or review. If the Commission requests the Attorney General to investigate or review, the Commission must notify the Attorney General and the Inspector General. The Attorney General may not begin an investigation or review until receipt of notice from the Commission.
(Source: P.A. 96-555, eff. 8-18-09.)

(5 ILCS 430/20-52)

Sec. 20-52. Release of summary reports.

(a) Within 60 days after receipt of a summary report and response from the ultimate jurisdictional authority or agency head that resulted in a suspension of at least 3 days or termination of employment, the Executive Ethics Commission shall make available to the public the report and response or a redacted version of the report and response. The Executive Ethics Commission may make available to the public any other summary report and response of the ultimate jurisdictional authority or agency head or a redacted version of the report and response.

(b) The Commission shall redact information in the summary report that may reveal the identity of witnesses, complainants, or informants or if the Commission determines it is appropriate to protect the identity of a person before the report is made public. The Commission may also redact any information it believes should not be made public. Prior to publication, the Commission shall permit the respondents, Inspector General, and Attorney General to review documents to be made public and offer suggestions for redaction or provide a response that shall be made public with the summary report.

(c) The Commission may withhold publication of the report or response if the Executive Inspector General or Attorney General certifies that releasing the report to the public will interfere with an ongoing investigation.

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

(5 ILCS 430/20-55)

Sec. 20-55. Decisions; recommendations.

(a) All decisions of the Executive Ethics Commission must include a description of the alleged misconduct, the decision of the Commission, including any fines levied and any recommendation of discipline, and the reasoning for that decision. All decisions of the Commission shall be delivered to the head of the appropriate State agency, the appropriate

ultimate jurisdictional authority, and the appropriate Executive Inspector General. The Executive Ethics Commission shall promulgate rules for the decision and recommendation process.

(b) If the Executive Ethics Commission issues a recommendation of discipline to an agency head or ultimate jurisdictional authority, that agency head or ultimate jurisdictional authority must respond to that recommendation in 30 days with a written response to the Executive Ethics Commission. This response must include any disciplinary action the agency head or ultimate jurisdictional authority has taken with respect to the officer or employee in question. If the agency head or ultimate jurisdictional authority did not take any disciplinary action, or took a different disciplinary action than that recommended by the Executive Ethics Commission, the agency head or ultimate jurisdictional authority must describe the different action and explain the reasons for the different action in the written response. This response must be served upon the Executive Ethics Commission and the appropriate Executive Inspector General within the 30-day period and is not exempt from the provisions of the Freedom of Information Act.

(c) Disciplinary action under this Act against a person subject to the Personnel Code, the Secretary of State Merit Employment Code, the Comptroller Merit Employment Code, or the State Treasurer Employment Code is within the jurisdiction of the Executive Ethics Commission and is not within the jurisdiction of those Acts.

(d) Any hearing to contest disciplinary action for a violation of this Act against a person subject to the Personnel Code, the Secretary of State Merit Employment Code, the Comptroller Merit Employment Code, or the State Treasurer Employment Code pursuant to an agreement between an Executive Inspector General and an ultimate jurisdictional authority shall be conducted by the Executive Ethics Commission and not under any of those Acts.

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

(5 ILCS 430/20-60)

Sec. 20-60. Appeals. A decision of the Executive Ethics Commission to impose a fine or injunctive relief is subject to judicial review under the Administrative Review Law. All other decisions by the Executive Ethics Commission are final and not subject to review either administratively or judicially.

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

TITLE 2: GOVERNMENTAL ORGANIZATION
SUBTITLE E: MISCELLANEOUS STATE AGENCIES
CHAPTER VI: EXECUTIVE ETHICS COMMISSION
PART 1620 ORGANIZATION, INFORMATION, RULEMAKING AND HEARINGS
SECTION 1620.300 CONDUCT OF INVESTIGATIONS

Section 1620.300 Conduct of Investigations

- a) Policy and Procedures Manual
 - 1) All investigations by an Executive Inspector General or his or her employees (collectively known as EIG) shall be conducted in accordance with procedures contained within this Part and within a policy and procedures manual developed by the EIG and approved by the Executive Ethics Commission. Approval shall be based on compliance with the Act, this Part and other applicable law. A policy and procedures manual should give direction to EIG employees that supplement the requirements of the Act and this Part.
 - 2) The policy and procedures manual described in subsection (c) shall be submitted for approval to the Executive Ethics Commission within 90 days after July 1, 2008. Any future amendments to the policy and procedures manual shall be subject to the Commission's approval. An updated policy and procedures manual for each EIG shall be posted on the EEC website. Portions of the policy and procedures manual that may compromise the integrity of investigations or confidential investigative techniques may be redacted by the EEC after consultation with the appropriate EIG.
- b) Waiver of Policy and Procedures Manual Provisions
 - 1) Waiver by the Commission
Upon written petition by an Executive Inspector General and a finding that the waiver is, in the particular context, necessary to avoid compromising the integrity of an investigation, the Commission may grant a waiver of the subsection (c)(6) requirement that requests for documents or physical objects be in writing.
 - 2) Temporary Waiver by the Chair
The Chair of the Commission, or his or her designee, may likewise grant a waiver of the subsection (c)(6) requirement that requests for documents or physical objects be made in writing in response to an oral or written request by an EIG if the Chair or his or her designee finds that the waiver is, in the particular context, necessary to avoid compromising the integrity

of an investigation, and provided that, within 72 hours after the waiver, the Executive Inspector General files a written request to the Commission. A waiver granted by the Chair pursuant to this subsection (b)(2) may be withdrawn by the Chair at any time if he or she no longer reasonably believes that the waiver is necessary to avoid compromising the integrity of an investigation.

- c) The policy and procedures manual shall include, but not be limited to, the following:
- 1) An EIG shall accept case initiation forms from State of Illinois employees and the general public in accordance with Section 1620.320.
 - 2) An EIG shall not investigate allegations of violations of State or federal law or this Part made against an EIG (including his or her employees). An EIG shall not investigate allegations of violations of State or federal law or of this Part if an EIG (including his or her employees) could be reasonably deemed to be a wrongdoer or suspect. Instead, in such cases, the EIG shall promptly refer all such allegations to the EEC for consideration of appointment of a Special Executive Inspector General.
 - 3) Within 30 calendar days after receipt of a case initiation form as described in Section 1620.320, the EIG shall do one of 5 things:
 - A) Determine that no investigation is appropriate; or
 - B) Open an investigation file pursuant to Section 1620.330 and commence an investigation; or
 - C) Refer the case initiation form to the appropriate EIG, the Executive Ethics Commission or other appropriate body as described in Section 1620.340 and take no further action; or
 - D) Suspend the investigation pending review of the outcome of other proceedings; or
 - E) Refer the investigation to the Executive Ethics Commission for consideration of appointment of a Special Executive Inspector General.
 - 4) Each EIG shall disclose the opening of all investigation files, as described in Section 1620.330, in writing to the Executive Ethics Commission. The disclosure shall identify the affected office, agency or agencies, the date the investigation was opened, and the investigation's unique tracking number. Reports on all investigations opened in a calendar month shall be

submitted to the Commission on or before the 15th day of the following month.

- 5) All EIG requests for production of or viewing of documents or physical objects under office or agency control shall be made in writing; provided, however, that the Commission may exempt any EIG who functions wholly within a single office or agency from the application of this requirement upon joint petition by the EIG and the affected office or agency. A written request for documents or physical objects shall state that the recipient of the request, should he or she believe that the release of the subject matter of the request might violate existing rights or protections under State or federal law, has the right to seek a determination from the Commission relative to such rights or protections, if desired. An EIG may take reasonable steps to seal or otherwise insure the integrity of the requested documents or physical objects pending the Commission's determination. If security concerns demand the removal of sealed documents or physical objects, the EIG shall issue a subpoena before removal. The Commission shall consider the applicability of the right or protection asserted and issue a determination within 5 business days; provided, however that where delay for such a period could place an investigation in jeopardy, an EIG may request expedited consideration. The recipient and Commission shall maintain confidentiality about the request so as to minimize any risk of compromising the investigation. The recipient may assert any existing rights or protections under State or federal law with respect to the request, and such assertions made in good faith do not constitute failure to cooperate in an investigation.
- 6) An EIG desiring to interview any State officer or employee who is the subject of an EIG investigation and whom the EIG, based on the information available at the time of the interview, reasonably believes likely faces discipline shall notify the interviewee whether the underlying investigation is criminal or administrative in nature. If the underlying investigation is criminal in nature, the interviewee shall be presented a form that outlines the interviewee's rights during the interview, including the right to the presence of an attorney, union representative or coworker uninvolved in the investigation. If the underlying investigation is administrative in nature, the interviewee shall be presented a form that outlines the interviewee's rights during the interview, including the right to presence of a union representative or coworker uninvolved in the investigation. In both criminal and administrative investigations, the interviewee shall sign the form, attesting only to the fact that the form was presented to the interviewee and he or she was given the opportunity to read it. All forms presented to interviewees shall be pre-approved by the Commission. If, at any point, an interview subject requests the presence of a person authorized by this subsection (c)(6), or an attorney, the interview

shall be suspended and a new date and time set. Evidence obtained directly or indirectly in violation of this subsection (c) is not admissible in any proceeding before the Executive Ethics Commission.

- 7) No EIG shall infringe upon the right of employees or officers to seek advice from their agency ethics officer on the interpretation and implementation of the Act, or to seek advice from private legal counsel.
- 8) Conduct of Interview
 - A) Interviews shall be conducted in a businesslike manner. The investigator shall avoid any personality clashes, acts of undue familiarity, abuse, or use of profanity. The investigator shall treat all persons interviewed with respect and not unduly embarrass, inconvenience, intimidate or degrade the interviewee.
 - B) Any armed State employee present shall not use his or her firearms in any manner that might intimidate, unless he or she, or anyone else present in the room, is physically threatened.
 - C) Interviewees enjoy all rights in the course of an interview protected by the Constitution of the United States and federal and State law.
 - D) The duty to cooperate in investigations as provided at 5 ILCS 430/20-70 does not include restriction on those rights.
 - E) In the event that the subject of an interview believes that the investigator has operated in violation of this Part, or in violation of applicable law, he or she may file a written objection with the Commission, setting forth with specificity the nature of the alleged violation. Within 30 days after receiving the objection, the Commission shall issue a written finding either sustaining or overruling the objection, shall appoint a Special Executive Inspector General to discover more facts (by interviewing witnesses, etc.), or shall refer the issue to an appropriate law enforcement authority. If the Commission sustains the objection, it shall issue a copy of its finding to the EIG to whom the investigator reports, as well as make public a copy of its finding. Subjects of the complaint process described in this subsection (c)(8)(E) are entitled to due process of law.
- 9) State employees who are subjects of EIG interviews and whom the EIG, based on the information available at the time of the interview, reasonably believes likely faces discipline, shall be presented a form that outlines their rights during the interview. The form shall also clearly indicate that the interviewee has the right to refuse to consent to have the interview

recorded and the right to stop the recording of the interview at any time and that refusing to consent to have the interview recorded or to stop the recording at any time shall not constitute failure to cooperate in the investigation or otherwise subject the interviewee to any discipline. The form shall also indicate that the interviewee may request at any time that the interview be recorded. If the interviewee requests at any time that the interview be recorded, the interviewer shall honor this request, stop the interview and immediately provide the employee a request to record form. Upon execution of a request to record form, the interview and all future interviews of the subject shall be recorded by mechanical, digital or other means. All forms and recordings shall be preserved, unedited, in the investigation file. Nothing in this subsection (c)(9) shall be construed to require the recording of interviews other than pursuant to an appropriately executed request of the interviewee. The interviewee shall sign the form, attesting only to the fact that the form was presented to the interviewee and he or she was given the opportunity to read it.

- 10) Upon completion of investigations, the EIG or his or her designee shall write a final report summarizing the background of the investigation, the allegations, investigative steps taken and conclusions drawn. The final report shall include a recommendation regarding appropriate action. An investigation is deemed completed for purposes of this Part when all processes of internal review of the investigation and of the final report have terminated.
 - 11) The policy and procedures manual may contain additional policies or procedures not inconsistent with this Part, subject to Commission approval as outlined in subsection (a)(2).
- d) Any person may complain to the Commission, in writing, concerning an EIG's alleged violation of the Act or this Part. Upon receipt of a complaint, the Commission may notify the EIG and require him or her to provide information related to the investigation in order to determine whether any conduct has occurred that would require the Commission to appoint a Special Executive Inspector General pursuant to 5 ILCS 430/20-21. Under those circumstances, the Commission deems the EIG's disclosure of that information to the Commission to be "necessary" as provided at 5 ILCS 430/20-95(d).

Section 1620.310 State Officer or Employee Case Initiation Form

Each Executive Inspector General shall prescribe and make available a case initiation form for investigation of a complaint against a State officer or employee.

Section 1620.320 Case Initiation Form – Contents

The case initiation form shall set out:

- a) the name of the employee or officer who is alleged to have committed misconduct;
- b) the identity of the State agency by which the employee or officer is employed;
- c) the name, address and telephone number of the complainant, unless filed anonymously;
- d) the date and time of the alleged misconduct;
- e) a description of the acts and circumstances that surrounded the alleged misconduct;
- f) the names of any other person who witnessed or participated in the alleged misconduct;
- g) an address to which the completed form may be mailed;
- h) a statement of the confidentiality of the identity of the complainant (see 5 ILCS 430/20-90(a));
- i) a statement that penalties may be applied for intentionally making a false report alleging an ethics violation (see 5 ILCS 430/50-5(d)); and
- j) such other information that the Executive Inspector General reasonably requires.

Section 1620.330 Opening an Investigation File

- a) Upon deciding to open an investigation file in accordance with Section 1620.300(c)(4)(B), the Executive Inspector General shall promptly create an investigation file and assign the file a unique tracking number. Multiple case initiation forms that relate to the same alleged acts of misconduct may be consolidated for purposes of investigation. In the absence of a completed case initiation form, the Executive Inspector General may create an investigation file and assign the file a unique tracking number if the Executive Inspector General reasonably believes that misconduct may have occurred within the Executive Inspector General's jurisdiction. Investigations that have been closed and are reopened, involving the same alleged wrongdoing by at least one of the same persons who was the subject of the original complaint, shall be identified by the same tracking number as the initial investigation. All time limits stated in this Part shall be applied from the date of the original complaint.

- b) The investigation file shall contain the case initiation form, or if none, so much of the information that would normally appear on the case initiation form as is known to the Executive Inspector General at the inception of the matter.

Section 1620.340 Referral to the Appropriate Executive Inspector General

Notwithstanding Section 1620.330, if an Executive Inspector General receives a case initiation form or other information that alleges misconduct of an officer or employee outside his or her jurisdiction, he or she shall promptly forward the case initiation form or information to the appropriate Executive Inspector General, appropriate ethics commission or other appropriate body and shall keep a record of this referral and its recipients.

Section 1620.350 Investigations

Investigations shall commence upon the opening of an investigation file in accordance with Section 1620.330. Investigations shall be conducted in accordance with Section 20-20 of the Act [5 ILCS 430/20-20].