



OFFICE OF EXECUTIVE INSPECTOR GENERAL
FOR THE AGENCIES OF THE ILLINOIS GOVERNOR

Statement of
Executive Inspector General Ricardo Meza

Regarding:

Serving as Inspector General of the Regional Transit Boards

Northeastern Illinois Public Transit Task Force
March 17, 2014

Thank you for inviting me to submit this statement. I am the Executive Inspector General for the Office of Executive Inspector General for the Agencies of the Illinois Governor (OEIG). I hope my comments will assist the Northeastern Illinois Public Transit Task Force in its mission. Although confidentiality concerns prevent me from discussing any investigation that has not yet been publicly disclosed, I want to provide you with general information about our office and respond to the three topics raised in your March 11, 2014 letter, namely:

- the expectations and experience of our office investigating the transit agencies;
- the interrelation of the work of our office and the disclosure of information by agencies under the Illinois Freedom of Information Act; and
- changes that may be made to ensure greater efficiency, accountability, coordination, and transparency among the transit agencies.

Background Information

In 2003, the OEIG was created as an independent state agency whose mission is to investigate “allegations of fraud, waste, abuse, mismanagement, misconduct, nonfeasance, misfeasance, malfeasance, or violations of [the State Officials and Employees Ethics Act (Ethics Act)] or violations of other related laws and rules.”¹ Our jurisdiction includes the Governor, the Lieutenant Governor and the many agencies and boards under them, as well as the nine state public universities and the four northeastern Illinois regional transit boards. We also have jurisdiction to conduct investigations relating to vendors and others doing business with the aforementioned entities. Under state law, the executive inspector general has the discretion to determine “the appropriate means of investigation,”² and has full authority to organize his or her office, including the employment of deputies, assistants and other employees.³

My authority to serve as inspector general for the Regional Transportation Authority (RTA), Chicago Transit Authority, Metra, and Pace derives from SB 3965, signed into law on February 14, 2011, and which became effective July 1, 2011. This legislative action followed the public disclosure of allegations of misconduct involving Metra’s former executive director.

In light of these added responsibilities, the General Assembly appropriated monies from the Public Transportation Funds for our work related to the regional transit boards (“RTBs”). Thus, we created a new investigative division staffed with about 12 employees whose sole duties and responsibilities consist of conducting independent, objective, and thorough investigations involving the RTBs. Since that time, we have issued numerous summary reports of investigations, some of which have been publicly disclosed.

¹ 5 ILCS 430/20-10(c).

² 5 ILCS 430/20-20(1).

³ 5 ILCS 430/20-10(d).

Expectations and Experience of the OEIG Investigating Transit Agencies

In functioning as inspector general for the RTBs, we have faced various challenges to how we have organized our office, how we are appropriated funding, and how we obtain information for investigative purposes:

First, in late 2012, we encountered inexplicable challenges to our decision to hire auditors to provide appropriate oversight of RTB-conducted audits. In October 2012, in response to our posting of an auditor employment opportunity, the RTA wrote to us requesting that we *not hire* auditors, and asserted that the OEIG is *not authorized* to conduct or review audits. *See* Attachment A. We responded by informing the RTA that we respectfully disagreed. *See* Attachment B. We heard nothing more from the RTA about this issue, and have recently hired two investigative auditors who will assist us in reviewing and independently analyzing RTB-conducted audits to determine if and when investigation by the OEIG is warranted.

Second, we encountered some unexpected challenges when we learned that in a letter dated April 10, 2013, the RTA communicated with members of the General Assembly, without notifying us, that the RTA believed it was appropriate for the General Assembly to reduce our Public Transportation Fund appropriation. *See* Attachment C. After we discovered the existence of the RTA letter, we sent our own letter to members of the General Assembly's appropriation committees and the RTBs noting, among other things, that the OEIG's FY 14 Public Transportation Fund appropriation should not be reduced, and also dispelling inaccuracies in the RTA's letter. *See* Attachment D.

Third, we have also encountered challenges in obtaining information from RTBs, including information sought through "requests for documents." When conducting investigations we must often seek information from a regional transit board or its employees via a written request for documents. Metra has asked that we direct such requests to its ethics officer.⁴ In response to that request, via a letter dated July 15, 2013, we advised the RTBs that as a general matter we would direct requests for documents to their ethics officers so long as doing so does not "compromise, hinder, delay, or otherwise prevent us from conducting our investigation in the manner we deem appropriate." *See* Attachment E. We recently learned, from this Task Force's website, that in November 2013, Metra revised its Ethics Manual, and the draft manual states:

Employees receiving any requests from the OEIG for Metra documents or physical objects must immediately inform Metra's Ethics Officer or an attorney in Metra's Law Department about the request. No Metra Employee shall disseminate or otherwise make available any such requested documents or physical objects to the OEIG directly.

See Attachment F (Metra Ethics Manual Exhibit 3a(i) and page 28). While we respect the right of agencies to monitor document disclosures, we are concerned that this policy will have a chilling effect on whistle blowers and witnesses in OEIG investigations.

⁴ The CTA has also asked that we direct requests for documents to the ethics officer, or at a minimum, copy the ethics officer on such requests submitted to CTA staff.

Interrelation of the OEIG's Work and Agency Disclosure of Information under the Freedom of Information Act

As the law currently stands, OEIG “investigatory files and reports” are confidential and exempt from disclosure under the Freedom of Information Act (FOIA),⁵ and for good reason: some allegations we receive turn out to be unfounded and thus, are not appropriate for public disclosure. Public disclosure would be unfair to those against whom unfounded complaints have been made. However, the limitations or restrictions of the Ethics Act’s current confidentiality provisions are occasionally tested, as they were in early 2013, when a state agency under OEIG investigation received a FOIA request for copies of the OEIG’s investigative requests for documents. In fact, there have been other FOIA requests that have more broadly sought all communications between other agencies and our office. In that circumstance, it was and is our position that because our requests for documents are part of *our* investigatory file, these documents should be exempt from FOIA; otherwise persons could circumvent the Ethics Act’s confidentiality provisions by directing FOIA requests to recipients of OEIG files rather than to the OEIG itself.⁶

In the meantime, we have discovered that agencies, including RTBs, have sought to use confidentiality provisions and restrictions imposed *upon the OEIG* as the basis to withhold information contained in *their agency files* from disclosure. Specifically, at the July 11, 2013 House Mass Transit Committee hearing, Metra representatives informed committee members that Metra could not disclose internal Metra documents to the committee because the documents had been turned over to the OEIG and thus were “confidential.” In response to Metra’s incorrect assertions, I was obligated to inform House committee members that Metra was incorrect and that only *OEIG documents and files* are confidential, not documents Metra *provided to* the OEIG or documents otherwise in Metra’s possession. Although the law may be unclear as to the disclosure of OEIG files, there is really no dispute that agency files, including RTB files or documents, are *not confidential* or *exempt* from disclosure simply because the OEIG either requested the documents or because a RTB provided the documents to the OEIG. We believe there should be some clarification of the FOIA laws in this regard.

Thus, we recommend the Task Force consider offering legislation that would amend the Ethics Act to clarify the parameters of the Ethics Act’s confidentiality provisions as they relate to OEIG files provided to an affected state agency or RTB.

Changes that May be Made to Ensure Greater Efficiency, Accountability, Coordination and Transparency Among the Transit Agencies

Ensuring efficiency, accountability, coordination and transparency among the transit agencies is crucial, which we believe is one reason why the General Assembly appointed our agency to serve as inspector general for the RTBs. The OEIG seeks to accomplish these worthy goals by conducting thorough, objective, and timely investigations of allegations of misconduct. In this regard, we are pleased to report that information relating to the OEIG is available on each of the RTBs’ websites. We are also pleased to report that in FY 13, the OEIG updated its fraud

⁵ 5 ILCS 430/20-95(d).

⁶ In light of the Ethics Act’s apparent ambiguity, our office has requested an opinion from the Attorney General’s Office about the confidentiality provisions relating to OEIG files. See Attachment G.

awareness program, and Metra, among others, agreed to make use of the OEIG's new fraud reporting posters. These posters remain present on some Metra trains.

Although in most circumstances we believe OEIG investigators are able to complete their investigations without any impediments, we would like to address two issues that may inhibit our investigations: 1) attorney-client privilege objections and 2) agency-attorney representation during investigative interviews.

First, agencies and boards, including the RTBs, have at times asserted attorney-client privilege regarding documents, which may limit our ability to fully and efficiently conduct administrative investigations. As the law currently stands, if the OEIG asks an agency to produce documents and the agency asserts privilege, and we challenge the claim of privilege, the agency may nevertheless refuse to produce the documents. At its discretion, the agency may seek a determination from the Executive Ethics Commission (EEC) as to whether it has a right to withhold documents, or it may simply sit on its objection.⁷ In contrast, there currently is no mechanism for the OEIG to similarly seek a determination from the EEC, even if we believe an agency may be asserting a privilege without a sufficient legal basis.

In fact, the assertion of attorney-client privilege is becoming more commonplace, although not always without basis. For example, as reflected in a recently released final summary report involving former RTA Director Tyrone Crider,⁸ OEIG investigators sought to obtain certain information from RTA's General Counsel, and, even though the General Counsel acknowledged being aware of a certain conversation that investigators were seeking to corroborate, OEIG investigators were unable to obtain the information because the RTA asserted attorney-client privilege. In an effort to obtain the information, on July 31, 2013, our agency asked RTA Chairman John Gates to waive any applicable privilege, but our request was denied. Our request was made about two weeks after the RTA held a public hearing relating to Metra misconduct in which RTA board members asked Metra to waive *its* attorney-client privilege.⁹ In any event, as noted in the OEIG summary report involving Mr. Crider, in denying our request the Chairman stated that it was "critical that RTA have the ability to speak freely with counsel without concern that the attorney-client privilege will later be compromised." In this instance, although we were disappointed that the RTA did not waive its privilege, our agency concluded that the privilege appeared to have been properly asserted. Furthermore, we were fortunately able to complete our investigation. Nevertheless, the RTA's refusal to waive privilege delayed our efforts and eventually prevented us from obtaining all relevant evidence.

The OEIG has no objection in principle to an affected government agency declining to provide information based on the attorney-client privilege. However, government agencies are different than private corporations or individuals. Government agencies are accountable to the public, which has a legitimate interest in knowing how public money is spent, how public agencies are operating, and whether government officials or employees are engaging in misconduct. Government attorneys have a duty not only to their respective agencies, but to the public to ensure that government entities comply with the law. As courts have observed, "[t]he

⁷ See Ill. Admin. Code tit. 2, § 1620.300(c)(5).

⁸ This report is available on the OEIG website, http://www2.illinois.gov/oeig/Pages/RTB_Cases.aspx.

⁹ This RTA Special Meeting of the Board was held on July 17, 2013.

governmental privilege stands squarely in conflict with the strong public interest in open and honest government,” *Reed v. Baxter*, 134 F.3d 351, 357 (6th Cir. 1998).

Thus, while the OEIG recognizes the validity and existence of the attorney-client privilege, the assertion of the privilege without a compelling legal basis could interfere with OEIG investigations, and without a mechanism to obtain a prompt and independent review of privilege claims, may unnecessarily delay OEIG investigations. We believe that principles of efficiency and accountability demand that the OEIG have the same right to seek an immediate determination of the assertion of the privilege as do agencies under current law.

Second, our office has experienced issues relating to agency attorneys representing witnesses during investigative interviews. Current law provides that for investigations of a criminal nature, an interviewee has a right to have an attorney, union representative, or a coworker uninvolved in the investigation present at the interview.¹⁰ When the underlying investigation is administrative in nature, the interviewee has the right to have a union representative or coworker uninvolved in the investigation present during the interview.¹¹ The OEIG has had requests from interviewees (or the interviewee’s agency counsel) to have their agency’s general or other agency counsel act as their representative which may raise issues because agency counsel and attorneys may be involved in the investigation or in subsequent employee disciplinary action. Further, agency counsels have a duty to represent the agency and therefore, may have an inherent conflict of interest. Finally, the participation of agency counsel could have a chilling effect on interviewee statements and whistle blower complaints.

Thus, as a result of these two issues, we recommend that the Task Force consider offering legislation that would amend the Ethics Act to allow an inspector general to seek an immediate and independent EEC review, and prompt determination, of any privilege claim or an agency’s claim that an interviewee representative, such as an agency attorney, is uninvolved.

We further recommend, that to the extent RTBs do not already do so, that the RTBs:

- post all policies and procedures on their websites;
- post information regarding contracts online;¹² and
- post information regarding employee data online.

We believe these practices will allow greater transparency to the public of RTB information, and also allow the OEIG to more efficiently obtain information.

Closing Comments

As we continue to navigate challenges involved with administrative investigations, including those involving the RTBs, I am hopeful that all bodies charged with serving the public strive toward greater transparency and cooperation. Thank you for considering this statement.

¹⁰ Ill. Admin. Code tit. 2, § 1620.300(c)(6).

¹¹ *Id.*

¹² On February 14, 2014, Representative Michael Tryon introduced HB 5842, which amends the Regional Transportation Authority Act and requires the Authority to create a website known as the Greater Chicago Mass Transit Transparency and Accountability Portal, which requires public disclosure of employee, expenditure, and contract information. The OEIG believes this sort of bill would increase transparency and thus would be generally supportive if this sort of legislation.

Attachment A



**Regional
Transportation
Authority**

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OCT 23 2012

Office of Executive
Inspector General

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(312) 913-3200
www.rtachicago.com

October 17, 2012

Mr. Ricardo Meza
Executive Inspector General
Office of the Executive Inspector General
32 West Randolph, Suite 1900
Chicago, IL 60601

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Joseph G. Costello
Executive Director

Dear Mr. Meza:

We were recently provided copies of the new OEIG positions of "Regional Transit Board Supervising Auditor," and "Regional Transit Board Auditor." The job descriptions state that the OEIG Auditor "conducts proactive and reactive audits and reviews in accordance with industry standards and best practices," "evaluates propriety of audit findings and recommendations," and "reviews and evaluates audits performed by internal and external auditors relating to the RTBs."

We respectfully request that these positions not be filled. The State Ethics Act does not authorize the OEIG to conduct or review audits, let alone hire personnel whose job duties entail auditing the RTBs and reviewing audits of the RTBs that were conducted by others, including other government agencies. The State Ethics Act does not empower the OEIG to audit the RTBs or, for that matter, any State agency within its jurisdiction. Instead, the State Ethics Act specifically limits the OEIG's authority "to investigat[ing] allegations of fraud, waste, abuse, mismanagement, misconduct, nonfeasance, misfeasance, malfeasance, or violations of this Act." 5 ILCS 430/75-5(b). The Illinois Auditor General also conduct audits of the transit boards when authorized to do so by the Legislative Audit Commission. 25 ILCS 130/3-1.

The proposed OEIG audit function would duplicate the audit function that is provided to the Regional Transportation Authority by statute. The RTA Act expressly authorizes the Regional Transit Authority to "conduct audits of each of the Service Boards no less than every 5 years" in the areas of "management, performance, financial, and infrastructure condition." 70 ILCS 3615/2.01(b).



Metra



Those are the exact types of audits that the OEIG's proposed auditors would conduct. In addition, each of the Transportation Boards maintain their own internal audit functions, whose activities are coordinated with the RTA audit function. Finally, the Federal Transit Administration audits and reviews any number of programs and conditions of the service boards, including DBE (49 CFR Part 26), safety and security (49 U.S.C. 5329), and federal funding program compliance (49 U.S.C. 5307(h)) providing another oversight level for Transportation Board activities.

In summary, we cannot support the OEIG's assumption of an audit function and hiring of audit personnel when it has no governmental mandate or statutory authorization to do so. Moreover, the expenditure of scarce public resources on duplicative auditing activities wastes funds that could otherwise be used for transit needs, particularly when the same audits are already mandated to be conducted by the RTA. In addition, in the event the OEIG does proceed, RTA would not agree to allow such an audit by the OEIG until such time as legislation is passed authorizing the OEIG to conduct such audits.

Sincerely,

A black rectangular redaction box covering the signature of Joseph G. Costello.

Joseph G. Costello
Executive Director

Attachment B



OFFICE OF EXECUTIVE INSPECTOR GENERAL
FOR THE AGENCIES OF THE ILLINOIS GOVERNOR

32 WEST RANDOLPH STREET, SUITE 1900
CHICAGO, ILLINOIS 60601
(312) 814-5600

Via Electronic Mail and Facsimile

October 18, 2012

Joseph Costello
Executive Director
Regional Transportation Authority
175 W. Jackson Blvd., Ste. 1650
Chicago, IL 60604

Re: OEIG Regional Transit Board Auditor Positions

Dear Mr. Costello:

Our Office has reviewed your October 17, 2012 letter in which you request that we not fill two auditor positions. You are making this request because you believe the State Officials and Employees Ethics Act (Ethics Act) does not “authorize” or “empower” us to conduct or review audits and in your view, “limits” our authority to “investigat[ing] allegations of fraud, waste, abuse, mismanagement, misconduct, nonfeasance, misfeasance, malfeasance, or violations of [the Ethics] Act.” You also state that if we decide to proceed (with hiring auditors) that the Regional Transportation Authority (RTA) “would not agree to allow such an audit by the OEIG until such time as legislation is passed authorizing the OEIG to conduct such audits.”

While we appreciate the RTA’s interpretation of the Ethics Act, unfortunately we cannot agree with your reading. The Ethics Act provides our Office with broad rather than limited authority. Moreover, the Ethics Act provides us with “the discretion to determine the appropriate means of investigation,” and provides us with “full authority to organize” our staff. In addition, our Office was given jurisdiction over the Regional Transit Boards (RTBs) in order to provide *independent* oversight and as such, we intend to select appropriate staff to do so. I encourage you to review the December 2011 United States Government Accountability Office publication entitled: **Government Auditing Standards** available at <http://www.gao.gov/yellowbook> for information on the duties an “auditor” performs.

Finally, we do not agree that performing our mandated oversight in a manner we deem appropriate is, in any way, a waste of “scarce public resources.” By appointing our Office to serve as executive inspector general for the RTA and RTBs, the legislature intended that the RTA and RTBs be subject to more, rather than less, oversight. In any event, we hope the RTA and RTBs continue cooperating with our Office and hope to receive your cooperation regarding any audit(s) we may conduct, be they financial, attestation or performance audits.

Sincerely,


Ricardo Meza
Executive Inspector General

Attachment C



**Regional
Transportation
Authority**

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April 10, 2013

Dear Illinois General Assembly members:

BOARD OF DIRECTORS

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Donald L. Totten
Douglas M. Troiani

Joseph G. Costello
Executive Director

I am writing to you today to share with you three concerns the Regional Transportation Authority (the "RTA") has regarding the Governor's proposed budget.

Please understand that the comments that follow are offered with a full appreciation and understanding of the extraordinary fiscal challenges that face the State of Illinois and the enormity of the task before the Governor and General Assembly members—who will be required to make many difficult decisions when crafting the Fiscal Year 2014 budget.

Issue No. 1 The Public Transportation Fund Needs an Additional \$17 Million in Appropriation

Our first concern relates to the Public Transportation Fund (the "PTF") appropriation in the Proposed Budget. The PTF is funded by the State and a part of the amount allocated to the PTF is determined by the following formula—30% of the sales tax collected in the RTA region and 30% of the real estate transfer tax ("RETT") collected in the City of Chicago. In the Proposed Budget this 30% match is referred to as "RTA Operating Assistance Grants."

The Proposed 2014 Budget allocation for "RTA Operating Assistance Grants" is \$342 million. However, the RTA estimates that it will need approximately \$359 million in FY 2014. Based on recent sales tax trends within the region and current economic projections, the RTA's estimate of this item for FY 2014 is \$345.2 million, or \$3.2 million higher than the proposed allocation. Additionally, the RTA's estimate of \$359 million includes \$13.8 million to cover the discrepancy between the amount of PTF money that was appropriated in FY 2013 and the estimated total amount of PTF money still owed the RTA from FY 2013. If the allocated amount for SFY 2014 is not increased by \$17 million to \$359 million, the RTA believes that there will be a point in the next fiscal year where State funds intended to match regional sales taxes and RETT will again not be sufficient.

Issue No. 2 Reduced and Ride Free Reimbursement Appropriation is nearly \$70 million less than the Estimated Cost to the RTA

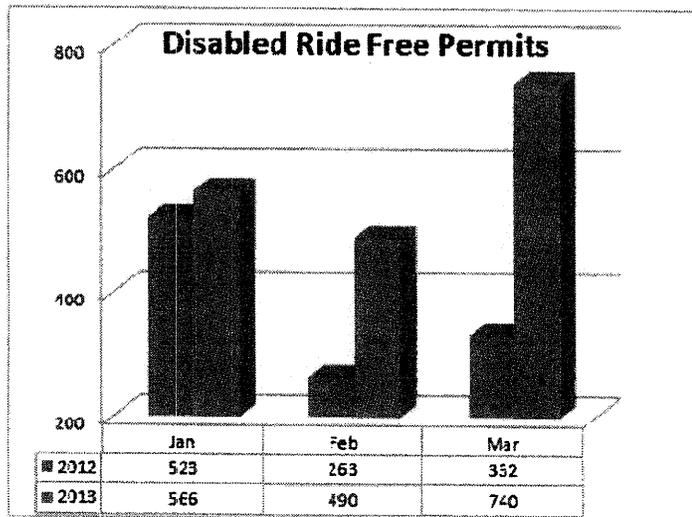
The cost of providing reduced fare and free rides for FY 2014 is estimated to be \$102.6 million but the Proposed Budget only appropriates \$34.1 million. The RTA strongly supports any efforts to increase the States assistance in offsetting the cost of providing reduced fare and free rides.



Metra



Furthermore, since the Department on Aging's Circuit Breaker program has been eliminated and the new Benefit Access Program began accepting applications online, there has been a significant increase in the number of applications approved for free ride permits. The chart below displays this significant increase for the months of February and March of 2013.



Issue No. 3 Reduction in the Appropriation to the Office of the Executive Inspector General

Our last concern regarding the Proposed Budget involves the amount of money appropriated to the Office of the Executive Inspector General (OEIG) directly from the PTF. The RTA, CTA, Pace and Metra are the only entities that pay the OEIG from their dedicated account. Of the 3000 state agencies, boards, and nine universities, not one of them pay the OEIG from their dedicated account. In FY 2012, \$2 million was appropriated to the OEIG from the PTF, however the OEIG only spent \$308,116. In FY 2013, \$1,493,100 was appropriated to the OEIG from the PTF, however the OEIG has only spent \$834,614 to date.

The Proposed Budget appropriates \$1,610,800 to the OEIG for FY 2014. This is approximately 21% of the OEIG's total proposed budget for FY 2014. There are approximately 15,000 RTA, CTA, Pace and Metra employees which make up less than 10% of all individuals under the OEIG's jurisdiction. The Proposed Budget appropriates approximately \$41 per employee to investigate non-transit employees but appropriates approximately \$107 per employee to investigate transit employees. Therefore, the RTA believes that the correct appropriation to the OEIG to investigate transit should be consistent with the amount appropriated to investigate non-transit workers. Any money diverted from PTF is less money for the operations of CTA, Metra and Pace.

Letter to IL Gen Assembly re: 2014 Budget
April 10, 2013
Page 3 of 3

Thank you for your time and your thoughtful consideration. I look forward to working with you and your staff in the coming weeks to pass a budget that ensures that public transit in the Chicago Metropolitan Region remains a safe and efficient option.

If you would like to discuss the RTA's concerns further, I am available or feel free to contact Jordan Matyas, the RTA Chief of Staff at (312) [REDACTED]

Sincerely,

[REDACTED]

Joseph G. Costello
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Regional Transportation Authority
175 W. Jackson, Suite 1650
Chicago, IL 60604
Office (312) [REDACTED]
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Attachment D



OFFICE OF EXECUTIVE INSPECTOR GENERAL
FOR THE AGENCIES OF THE ILLINOIS GOVERNOR

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April 18, 2013

Via Electronic Mail

Joseph Costello
Executive Director
Regional Transportation Authority
175 W. Jackson Blvd., Ste. 1650
Chicago, IL 60604

Dear Mr. Costello:

Yesterday we learned of your April 10, 2013 letter to members of the Illinois General Assembly in which you note, among other things, that our FY14 Public Transportation Fund (PTF) appropriation should be reduced and that our PTF appropriation should be “consistent with the amount appropriated to investigate non-transit workers.” In support of your request, you advance several incorrect assertions, which, unfortunately, do not support your request.

First, you incorrectly note that there are 3,000 state agencies and boards under our jurisdiction when in fact there are about 300 boards and 40 state agencies.

Second, you incorrectly refer to PTF appropriations as being your “dedicated account” when in fact PTF appropriations are public rather than solely Regional Transit Board (RTB) funds. Moreover, as you know, the General Assembly has dedicated a small portion of PTF appropriations to our Office in order to investigate waste, fraud and abuse, as well as mismanagement, involving the RTBs and their boards.

Third, you incorrectly cite to the fact that because our agency only spent a portion of its FY12 PTF appropriation and has not spent its entire FY13 PTF appropriation, it somehow equates to having our FY14 PTF appropriation request reduced. This argument fails to acknowledge that the cause for our FY12 lapse was because we did not receive a PTF appropriation until mid-year FY12. Furthermore you fail to recognize that our ongoing efforts to control expenses, which will result in a lapse in FY13, is not a legitimate basis to discount (i.e., reduce) our facts-based FY14 PTF budget request.

Fourth, you incorrectly impute a so-called investigative “cost” per transit and non-transit employee that has no basis. Simply put, there is no direct or uniform relationship between the number of complaints we receive *vis-à-vis* the number of employees at the RTBs or other agencies we oversee.

Finally, we trust that in the future, we will be kept apprised of communications by your agency related to our budget.

Sincerely,

A black rectangular redaction box covering the signature of Ricardo Meza.

Ricardo Meza
Executive Inspector General

cc: Forrest Claypool, Chicago Transit Authority President
Alex Clifford, Metra Executive Director
TJ Ross, Pace Executive Director
State Senator Dan Kotowski, Chair – Senate Appropriations Committee II
State Representative Fred Crespo, Chair – House General Services Appropriations

Attachment E



OFFICE OF EXECUTIVE INSPECTOR GENERAL
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Via Electronic Mail

July 15, 2013

Joseph Costello
Executive Director
Regional Transportation Authority
175 W. Jackson Blvd., Ste. 1650
Chicago, IL 60604

Alex Wiggins, Deputy Executive Dir. of Admin.
Don Orseno, Deputy Executive Dir. of Operations
Metra
547 W. Jackson Blvd.
Chicago, IL 60661

Forrest Claypool
President
Chicago Transit Authority
567 W. Lake St.
Chicago, IL 60661

T.J. Ross
Executive Director
Pace
550 W. Algonquin Rd.
Arlington Heights, IL 60005

Re: OEIG Requests for Documents

Dear Messers Costello, Wiggins, Orseno, Claypool and Ross:

As you know, our Office is an independent state agency responsible for investigating allegations of waste, fraud, abuse, mismanagement, misconduct, and other violations of various laws and rules. 5 ILCS 430/20-10 (c). Effective July 1, 2011, we were given jurisdiction to serve as the Executive Inspector General for the Regional Transit Boards (RTBs).

With regard to performing our duties, state law provides us the discretion to determine the appropriate means of investigation and allows us to request information from any person as we deem necessary. 5 ILCS 430/20-20 (1) and (2). As you might expect, numerous factors dictate to whom we might direct requests for documents, including but not limited to:

- (1) the subject matter of our investigation;
- (2) the identity of the alleged wrongdoers;
- (3) potential conflict(s) of interest that might arise; and
- (4) our need to gather all relevant documentation in a timely manner.

To-date, we have not entered into any formal agreements with any of the RTBs regarding any particular procedure(s) with regard to requests for documents. Nevertheless, we have

generally agreed to send our requests for documents through the respective RTB ethics officers in order to facilitate production and to afford the respective ethics officer an opportunity to assert any rights they believe may be available to their agencies. It is not, nor has it ever been, our intent to prevent any agency from availing itself of any right(s) it might be afforded by administrative rule. *See* Ill. Admin. Code tit. 2, §1620.300(c)(5).

Nevertheless, in light of our statutory obligation, and in order to conduct investigations in a manner we deem appropriate, I am writing today for the purpose of clarifying an apparent misunderstanding about our general agreement and protocol for the issuance of requests for documents in connection with investigations. As noted, we have agreed as a general matter to direct requests for documents through the RTBs' ethics officers. However, we wish to inform you that we reserve the discretion to direct our requests for documents to specific individuals within your particular agencies where we deem it appropriate. Thus, we cannot and will not agree to direct *all* requests for documents to the attention of the ethics officers. However, in the spirit of cooperation and efficiency, we will continue to issue requests for documents to RTB ethics officers' attention in those circumstances where we believe doing so will not compromise, hinder, delay or otherwise prevent us from conducting our investigation in the manner we deem appropriate.

If any of you have any questions or would like to discuss this matter further, please feel free to contact me.

Sincerely,

A black rectangular redaction box covering the signature of Ricardo Meza.

Ricardo Meza
Executive Inspector General

cc: John S. Gates Jr., Chairman – Regional Transportation Authority Board of Directors
Terry Peterson, Chairman – Chicago Transit Board
Richard A. Kwasneski, Chairman – Pace Board of Directors
Brad O'Halloran, Chairman – Metra Board of Directors

Attachment F

EXHIBIT 3a(i)

Ethics Manual Draft Dated 11-14-13

15.0 OEIG Investigations

The Ethics Act designates the OEIG to serve as Executive Inspector General for Metra. The OEIG will accept all complaints of misconduct relating to Metra, and when appropriate, will open and conduct investigations.

15.1 Employees' Responses to OEIG's Request for Documents

As part of an investigation, the OEIG investigators may, to the extent permitted by applicable laws and rules governing the conduct of Executive Inspectors General, request for production or viewing documents or physical objects under Metra's control. Such requests must be made in writing by the OEIG. OEIG requests may potentially ask for documents or physical objects that are protected from disclosure by the attorney-client privilege or other applicable privileges.

To promote cooperation with the OEIG in its investigations while preserving Metra's rights, it is the policy of Metra that Employees who receive such a written request from the OEIG for the production or viewing of any documents or physical objects under Metra's control or otherwise owned by Metra, must consult with Metra's Ethics Officer regarding such a request. This is to ensure that Metra can make a determination whether any applicable privileges might apply. As such, Employees receiving any requests from the OEIG for Metra documents or physical objects must immediately inform Metra's Ethics Officer or an attorney in Metra's Law Department about the request. No Metra Employee shall disseminate or otherwise make available any such requested documents or physical objects to the OEIG directly. All requests for documents or physical objects by the OEIG must be handled by Metra's Ethics Officer or an attorney in Metra's Law Department.

This requirement does not prohibit an Employee from speaking with the OEIG directly without the Ethics Officer involvement. Further, this requirement does not inhibit an Employee's ability to report or discuss any wrongdoing. Employees are expected and encouraged to report any alleged wrongdoing with the appropriate internal party or external government agencies, including the OEIG.

Questions regarding OEIG investigations can be referred to Metra's Ethics Officer.

Attachment G



OFFICE OF EXECUTIVE INSPECTOR GENERAL
FOR THE AGENCIES OF THE ILLINOIS GOVERNOR

32 WEST RANDOLPH STREET, SUITE 1900
CHICAGO, ILLINOIS 60601
(312) 814-5600

April 18, 2013

Lynn Patton
Chief, Opinions Bureau
Office of the Illinois Attorney General
500 South Second Street
Springfield, IL 62706

Re: State Officials and Employees Ethics Act, Section 20-95(d)

Dear Chief Patton:

We respectfully request an Opinion from the Office of the Illinois Attorney General as to the confidentiality provisions and Illinois Freedom of Information Act (FOIA) exemptions set out in Section 20-95 of the State Officials and Employees Ethics Act (Ethics Act), 5 ILCS 430/1-5, *et seq.* We recently became aware that a news reporter issued a FOIA request to an agency under our jurisdiction in which she sought "all correspondence from the Illinois Office of Executive Inspector General in 2012 and 2013."¹ We believe this FOIA request sought documents that are confidential and exempt from FOIA, pursuant to Section 20-95(d) of the Ethics Act. We are specifically seeking an Opinion on whether correspondence, including but not limited to subpoenas and requests for documents or interviews, which bears our investigation's unique tracking number and is served upon and in the possession of one or more agencies under our jurisdiction, is confidential and should not be turned over in response to a FOIA request pursuant to 5 ILCS 430/20-95(d).

Under FOIA, 5 ILCS 140/1, *et seq.*:

§3(a). Each public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of this Act ...

§7(l). The following shall be exempt from inspection and copying: (a) information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.

¹We also recently became aware of another FOIA request by a reporter that sought "copies of any investigative subpoenas or other requests for documentation that DCEO has received from any other government agency, including, but not limited to, the Office of Executive Inspector General for the Agencies of the Illinois Governor ("OEIG") regarding DCEO-administered grants to the United Neighborhood Organization ("UNO)." In response, the agency provided our request for documents, which included our investigation's unique tracking number, and was made public in a March 29, 2013 article entitled, "State investigating \$98 million grant for UNO charter schools." <http://www.suntimes.com/19166036-761/state-investigating-98-million-grant-for-uno-charter-schools.html>

§7.5(h). Information the disclosure of which is exempt under the State Officials and Employees Ethics Act, and records of any lawfully created State or local inspector general's office that would be exempt if created or obtained by an Executive Inspector General's Office under that Act.

In addition, pursuant to the Ethics Act, OEIG investigatory files and reports are confidential and exempt from disclosure under FOIA:

Unless otherwise provided in this Act, all investigatory files and reports of the Office of an Executive Inspector General, other than monthly reports required under Section 20-85, are confidential, are exempt from disclosure under the Freedom of Information Act, and shall not be divulged to any person or agency, except as necessary (i) to a law enforcement authority, (ii) to the ultimate jurisdictional authority, (iii) to the Executive Ethics Commission, (iv) to another Inspector General appointed pursuant to this Act, or (v) to an Inspector General appointed or employed by a Regional Transit Board in accordance with Section 75-10.

5 ILCS 430/20-95(d) (emphasis supplied).

For your information, all of our investigations and corresponding investigatory files are assigned a unique tracking number, pursuant to 5 ILCS 430/20-65 and the Illinois Administrative Code. When our Office seeks or imparts information relating to one of our investigations, we include in our correspondence or documents the unique tracking number. Thus, in light of the various provisions set forth above, our Office considers "*all investigatory files and reports*" to include any correspondence bearing our unique tracking number and to be confidential and exempt under FOIA – absent the "as necessary" exceptions set forth in 20-95(d) and other relevant provisions that are not applicable here, even if they are in the agency's possession. To construe otherwise would nullify the confidentiality restrictions under which we operate and allow information to be made public that was not contemplated by the Ethics Act. We appreciate that there may be some disagreement as to what constitutes "investigatory files and reports," but in our opinion, "all correspondence from the Illinois Office of Executive Inspector General in 2012 and 2013" that includes our investigation's unique tracking number is confidential, exempt from FOIA, and should not be divulged in response to a FOIA request. See 5 ILCS 140/7(1)(a), 5 ILCS 140/7.5(h), and 5 ILCS 430/20-95(d).

We look forward to receiving your Opinion. Please feel free to contact me at (312) [REDACTED] should you need additional information.

Sincerely,

[REDACTED]
Ricardo Meza
Executive Inspector General

cc: Brent Stratton, Office of the Illinois Attorney General Chief Deputy Attorney General
John Schomberg, Office of the Governor General Counsel