

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

In re: HEIDI SCOTT,) OEIG Case #11-00955

OEIG FINAL REPORT (REDACTED)

Below is a final summary report from an Executive Inspector General. The General Assembly has directed the Executive Ethics Commission (Commission) to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes-competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut the report’s factual allegations or legal conclusions before the Commission.

The Commission received a final report from the Governor’s Office of Executive Inspector General (“OEIG”) and a response from the agency in this matter. The Commission, pursuant to 5 ILCS 430/20-52, redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Governor’s Executive Inspector General and to Heidi Scott at her last known addresses.

The Commission reviewed all suggestions received and makes this document available pursuant to 5 ILCS 430/20-52.

FINAL REPORT

I. Allegation and Background

The Office of Executive Inspector General (“OEIG”) received a complaint alleging that Illinois Department of Revenue (“IDOR”) employee Heidi Scott misused her IDOR computer on IDOR time.

Heidi Scott is an IDOR Staff Attorney licensed to practice law in the State of Illinois. Ms. Scott has been employed at IDOR for thirteen years, during which time she has had various duties and responsibilities. During all times relevant to this investigation, Ms. Scott’s duties and responsibilities included, among other things, preparing written opinions interpreting Illinois income tax law and analyzing the implications of Illinois tax legislation.

II. Investigation

A. Review of Documents from Heidi Scott's IDOR Computer Personal Drive

OEIG investigators obtained and reviewed a disk containing documents IDOR discovered on Ms. Scott's IDOR personal computer drive during an internal investigation. These files were located in a folder on Ms. Scott's IDOR personal computer drive entitled "2000 bills." Each file contained timestamps reflecting the date and time on which the file was created, most recently accessed, and most recently modified.¹ OEIG investigators reviewed the contents of the disk and discovered 37 files unrelated to Ms. Scott's official duties and responsibilities.

Thereafter, OEIG investigators obtained and reviewed Ms. Scott's IDOR timekeeping records. A comparison of the records to the modified dates on the 37 files discovered on her IDOR computer revealed that Ms. Scott accessed the following 29 documents during time she reported working:

- 28 individual documents related to a civil lawsuit Ms. Scott filed against IDOR, including, among other things, a timeline of events relating to her lawsuit, witness lists, filed affidavits, and deposition questions; and
- One file containing the itemized prices of various home repairs.

Each of these 29 documents were saved using the word processing software Microsoft Word.

B. Interview of Subject Heidi Scott

On October 28 and December 1, 2011, OEIG investigators interviewed Heidi Scott. During the interviews, Ms. Scott said her official duties and responsibilities are limited to addressing various income tax issues. Ms. Scott stated that, in performing her official duties, she produces written work product including:

- General Information Letters containing income tax advice;
- Private Letter Rulings from IDOR to Certified Public Accountant firms;
- Surveys regarding tax law questions;
- Memoranda to the IDOR Legislative Liaison; and
- Legal memoranda to tax auditors and private citizens responding to income tax law questions.

Investigators presented Ms. Scott with copies of the documents discovered on her IDOR computer personal drive and her IDOR timekeeping records. After reviewing the documents, Ms. Scott said that she believed she accessed the files from her IDOR computer on uncompensated time. Ms. Scott said that her IDOR computer was State property and further stated that all of the files other than the one relating to home repairs pertained to the lawsuit she filed against IDOR. Ms. Scott said the file containing home repair information was not related to

¹ IDOR employee ██████████ conducted the forensic examination of Ms. Scott's IDOR computer personal drive. ██████████ informed OEIG investigators that the "modified date," was the most reliable date to use in determining when Ms. Scott accessed a file because it would only change if Ms. Scott modified and saved the file.

her official duties and responsibilities, but stated that she probably accessed it on uncompensated time. Ms. Scott explained that she is not required to document her uncompensated breaks or lunch period and that she does not take either at a consistent time.

Ms. Scott informed investigators that she believed she could use her IDOR computer to access files relating to her IDOR lawsuit because the legal action involved her work conditions. Ms. Scott stated that her current work conditions negatively impacted her job performance and thus she reasoned that accessing these files was not “a restricted activity.” However, Ms. Scott did acknowledge that her official duties and responsibilities did not include working on litigation she filed against IDOR or addressing issues relating to labor or employment law. Ms. Scott said she accessed documents relating to her lawsuit on compensated time.

OEIG investigators provided Ms. Scott a copy of the IDOR Employee Handbook and directed her to IDOR Policy Chapter 4: State Property and Facilities, which states, in relevant part,

“[employees] are forbidden to use state time, property, or facilities, including equipment (for example photocopy machines) and supplies, for personal business.”

In response, Ms. Scott reiterated that her lawsuit related to her IDOR duties. Ms. Scott also said she was unable to access the State employee email and contact information necessary to prepare for litigation against IDOR from her home computer.

During her second interview, Ms. Scott directed investigators to IDOR Employee Handbook Chapter 5: Computer (Electronic) Security and began reading what was purportedly contained in that portion of the Handbook and read out loud the following,

“[e]mployees may use department computer resources during personal time as outlined elsewhere in this policy.”

Investigators reviewed the Handbook and noted that the policy Ms. Scott quoted actually read as follows:

“[e]mployees may use department computer resources *to access the Internet* during personal time as outlined elsewhere in the policy” (emphasis supplied).

In response, Ms. Scott stated that she had interpreted the computer policy to allow for personal use during personal time.

III. Analysis

The IDOR Employee Handbook (2004), Chapter 4, State Property and Facilities, states that employees are prohibited from using, among other things, State time for personal business. The IDOR Employee Handbook, Chapter 5, Computer (Electronic) Security, states “[a]ll computer resources are to be used during work hours for the sole purpose of conducting departmental business.”

The OEIG investigation revealed that Heidi Scott misused her IDOR computer on IDOR time. Ms. Scott accessed and modified 29 documents unrelated to her official duties from her IDOR computer. Ms. Scott admitted that she accessed the documents related to her lawsuit from her IDOR computer during her working hours. Ms. Scott also did not deny accessing the document relating to her home repairs from her IDOR computer during compensated time.

Ms. Scott attempted to justify accessing the 28 documents relating to her lawsuit against IDOR on three unmeritorious grounds. First, Ms. Scott said the documents pertaining to her litigation against IDOR related to her official duties. However, Ms. Scott's duties and responsibilities do not include preparing for litigation filed against IDOR, employment law, or labor law. In fact, when asked for illustrative examples of the written work product she produces for IDOR, Ms. Scott did not mention any documents or filings that relate to litigation. In addition, the documents Ms. Scott accessed from her IDOR computer do not relate to Illinois income tax law, Illinois tax legislation, or any other subject matter within the scope of her official duties and responsibilities. Moreover, none of the documents were prepared for IDOR use. Because the documents do not relate to conducting the business for which IDOR employs Ms. Scott, her use of her IDOR computer was improper.

Second, Ms. Scott stated that she needed to use her IDOR computer to access and modify the documents related to her lawsuit because her IDOR computer contained information necessary to prepare for litigation. Ms. Scott also said she could not access this information from her home computer. Ms. Scott's inability to access certain information from her home computer does not excuse her misuse of her IDOR computer.

Third, Ms. Scott stated that she believed IDOR policy permitted employees to "use department computer resources during personal time." However, the policy Ms. Scott cited applies only to Internet access during uncompensated time. In any event, Ms. Scott used her IDOR computer and the word processing software on her computer to access documents unrelated to her official duties and responsibilities *during compensated time*. Therefore, the allegation that Heidi Scott misused her IDOR computer is **FOUNDED**.

IV. Recommendation

Following due investigation, the OEIG issues this finding:

- **FOUNDED** – Heidi Scott used State equipment for non-IDOR departmental business, namely for her personal lawsuit against IDOR.

The OEIG recommends that Heidi Scott be subject to discipline for misusing her IDOR computer.

No further investigation is required and this matter is considered closed.



Illinois Department of Revenue

100 W. Randolph, Suite 7-500
Chicago, IL 60601
Gail A. Niemann, General Counsel

February 20, 2013

Neil P. Olson
Deputy Inspector General
Office of the Executive Inspector General
607 East Adams, 14th floor
Springfield, IL 62701-1634

Re: OEIG Case No. 11-955

Dear Mr. Olson:

Thank you for your letter of January 23, 2013, asking for an update on the status of the investigation into the activities of DOR employee Heidi Scott, any resulting corrective or disciplinary action, and the status of any proceedings initiated by her to contest those actions.

As we alerted you in my letter dated April 23, 2012, DOR determined that further investigation was required after receiving the OEIG's report, dated March 27, 2012, finding that she had engaged in misconduct involving the misuse of State equipment. The results of the DOR Internal Affairs investigation, along with the results of the OEIG investigation, resulted in our serving Scott with charges in the Fall of 2012. Those charges were:

- Inappropriate Use of IDOR Issued Computer Equipment;
- Conducting Personal Business on State Paid Time;
- Time Abuse; and
- Falsification of Time Records.

A pre-disciplinary hearing was conducted on October 16, 2012, and Scott submitted her response on November 5, 2012. On December 4, 2012, CMS approved DOR's recommendation that she be discharged for cause and mailed discharge papers to her, effective December 10. On December 5, DOR put her on paid administrative leave, and she was separated effective December 10. On January 2, 2013, DOR received notice that Scott filed an appeal of her separation with the Civil Service Commission.

Please let me know if you need any further information.

Sincerely,

Gail A. Niemann
General Counsel



Illinois Department of Revenue

100 W. Randolph, Suite 7-500
Chicago, IL 60601
Gail A. Niemann, General Counsel

April 23, 2012

RECEIVED
APR 26 2012
BY: _____

Neil P. Olson
Deputy Executive Inspector General
Office of the Executive Inspector General
607 East Adams Street, 14th Floor
Springfield, Illinois 62701

Re: Case Number 11-00955

Dear Deputy Executive Inspector General Olson:

The Department of Revenue has reviewed the Final Report on OEIG Case Number 11-00955. The Department is nearing completion of its investigation into the allegations contained in the OEIG's Final Report. Upon completion of our investigation, the Department will notify the OEIG of any actions taken to address the OEIG's recommendations.

Sincerely,

Gail A. Niemann
General Counsel

GAN:jb



Illinois Department of Revenue

100 W. Randolph, Suite 7-500
Chicago, IL 60601
Gail A. Niemann, General Counsel

April 25, 2013



Neil P. Olson
Deputy Inspector General
Office of the Executive Inspector General
607 East Adams, 14th floor
Springfield, IL 62701-1634

Re: OEIG Case No. 11-955

Dear Mr. Olson:

This letter will serve as a follow up to my letter to you dated February 20, 2013. DOR employee Heidi Scott returned to work at the Department of Revenue on Monday, April 15, 2013, under the terms of a last chance agreement. That agreement provided that she would dismiss the appeal to the Civil Service Commission of her termination, and that she accepted a 20 day suspension, for a period that started on December 19, 2012, and that the balance of the time up to April 15 would be treated as unpaid time off. We consider the last chance agreement to be the final resolution of the Department's consideration of the OEIG report dated March 27, 2012.

Please let me know if you need any further information.

Sincerely yours,

/
Gail A. Niemann
General Counsel

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JUN 24 2013

EXECUTIVE ETHICS COMMISSION

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE: Heidi Scott

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11-00955

RESPONDENT'S SUGGESTIONS FOR REDACTION / PUBLIC RESPONSE

Please check the appropriate line and sign and date below. If no line is checked the Commission will not make your response public if the redacted report is made public.

X Below is my public response. Please make this response public if the summary report is also made public; or

Below are my suggestions for redaction. I do not wish for these suggestions to be made public.

Respondent's Signature

6-21-13
Date

Instructions: Please write or type suggestions for redaction or a public response on the lines below. If you prefer, you may attach separate documents to this form. Return this form and any attachments to:

Illinois Executive Ethics Commission
401 S. Spring Street, Room 513 Wm. Stratton Building
Springfield, IL 62706

Please see attached response.

Respondent's Response

During the pendency of a federal lawsuit which I filed against the State for violation of the Family Medical Leave Act in March 2008, the OEIG received a complaint from an unnamed individual that I was misusing my Illinois Department of Revenue (IDOR) computer on IDOR time. Intense investigations began covering periods 2004 through 2012.

The OEIG scrutinized my time, time records, computer usage including emails and internet use. As a result they found 29 documents on my hard drive, 28 related to my FMLA lawsuit. The OEIG report fails to cite relevant portions of Employee Handbook such as "use of *computer equipment and* internet access to accomplish job responsibilities will always have priority over personal use" implying that personal use of state computer equipment is allowed so long as it does not interfere with work. The OEIG report also fails to mention that every evaluation of my job performance read "exceeded expectations." And, while the report claims I admitted to accessing personal documents during "compensated time" or "during working hours," it failed to note that use of state computers to access emails and the internet is allowed during personal break time of which I had 40 minutes per day. Break time is "compensated time" and occurs "during working hours." With a 3-hour daily commute and three small children, it is almost a necessity to complete some computer related tasks during personal time. The allegations of "misuse" of my IDOR computer seem to hinge on making a distinction between accessing the internet, reading and composing emails (which are allowed) and drafting or accessing other documents which apparently is not. The distinction is trivial as each of the activities arguably would affect work performance in a similar manner.

Despite OEIG concluding "no further investigation is necessary and this matter is considered closed," IDOR "determined that further investigation was *required*." The further IDOR investigation resulted in four charges against me. Two based on the original OEIG report and two related to abuse of time that was not found by the OEIG investigator. These charges resulted in my termination. During a two day hearing before the Illinois Department of Employment Security, the Department of Revenue submitted over 1,500 pages of material to support those charges. Administrative Law Judge James Ginder entered a decision on April 8, 2013 concluding that the weight of the evidence did not establish that I was terminated for misconduct as defined in Section 602A of the Unemployment Insurance Act. As to the allegations of misuse of time, the Administrative Law Judge found that IDOR appeared to have wavered on its enforcement of, and interpretation of the time usage policies during my tenure. Further, that there was confusion in and amongst the agency as to what exactly is required concerning signing in and out, and the ability to use stacked time and makeup time. Given the confusion, it could not be shown that my actions in violating any policies were deliberate and willful.

IDOR drafted the "Last Chance Agreement" referenced in its letter of April 25, 2013. Among the conditions of the return to work agreement not mentioned in IDOR's letter was that I would dismiss my FMLA lawsuit against the Department.

Unfortunately there is no way to undo the harm to my reputation, friendships and former good working relationships I enjoyed prior to this investigation and subsequent discipline. I respectfully request that the Executive Ethics Commission not publish the summary report and agency response in this case but in the event said report is made public that this response also be made public with it to provide some balance.

Thank you, Heidi Scott