OFFICE OF EXECUTIVE INSPECTOR GENERAL
FOR THE AGENCIES OF THE ILLINOIS GOVERNOR
69 WEST WASHINGTON STREET, SUITE 3400
CHICAGO, ILLINOIS 60602
(312) 814-5600

December 16, 2013

Via Electronic Mail

Ann Schneider
George Ranney, Jr.
Co-Chairs
Northeastern Illinois Public Transit Task Force
2300 S. Dirksen Parkway
Springfield, IL 62764

Re: Request for Information from the Regional Transit Boards

Dear Chairs Schneider and Ranney:

Our Office recently became aware of your December 6, 2013 letters to the heads of the Regional Transit Boards (RTBs) in which your Task Force has requested the following:

> [A] comprehensive list of all internal or external investigations, audits, analyses, or related reviews of the [RTB] or its employees during the last seven years, including those conducted by any inspectors general, the OEIG, Illinois Department of Transportation, and the U.S. Department of Transportation, and whether we may arrange to review these documents...

Please be advised that our Office believes that some of the information requested is confidential, pursuant to Section 20-95(d) of the State Officials and Employees Ethics Act. State law designates all OEIG investigatory files and reports to be confidential, except under certain exceptions. For your information, we have previously asked the Office of the Illinois Attorney General to provide us with an opinion on the confidentiality provisions and although we have yet to receive a response, we hope to soon. Attached is a copy of our request.

Thank you for your understanding.

Sincerely,

Ricardo Meza
Executive Inspector General

cc: Joseph Costello, Executive Director – Regional Transportation Authority
Forrest Claypool, President – Chicago Transit Authority
Thomas J. Ross, Executive Director – Pace
Donald Orseno, Interim Chief Executive Officer – Metra
Brent Stratton, Chief Deputy Attorney General – Office of the Illinois Attorney General
John Schomberg, General Counsel – Office of the Governor

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.

[1]We 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

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> §7.5(h). Information the disclosure of which is exempted 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:

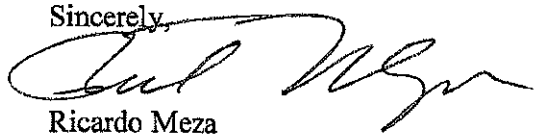
> Unless otherwise provided in this Act, *all investigatory files and reports of the Office of an Executive Inspector General, other than monthly reports required under Section 20-85, are confidential, are exempt from disclosure under the Freedom of Information Act*, and shall not be divulged to any 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) 814-8268 should you need additional information.

Sincerely,



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