

SIAAB Guidance #07

Access and Disclosure of Engagement Records

Adopted December 13, 2016

*** Note: The terms “Chief Executive Officer” or “Agency Head” as utilized in this document are interchangeable and shall refer to the individual who has been designated by the Governor as the head of an agency under the Governor or the Constitutional Officer, in the case of those entities which do not fall under the direct jurisdiction of the Governor. The term “Agency” as utilized in this document, refers to an agency under the Governor or the Constitutional Office, in the case of those entities which do not fall under the direct jurisdiction of the Governor. Illinois Administrative Procedures Act (5 ILCS 100 Section 1-25) states, “‘Agency head’ means an individual or group of individuals in whom the ultimate legal authority of an agency is vested by any provision of law.”

“Chief Audit Executive (or Chief Internal Auditor) describes the role of a person in a senior position responsible for effectively managing the internal audit activity in accordance with the internal audit charter and the mandatory elements of the International Professional Practices Framework. The Chief Audit Executive (or Chief Internal Auditor) or others reporting to the Chief Audit Executive (or Chief Internal Auditor) will have the appropriate professional certifications and qualifications. The specific job title and/or responsibilities of the Chief Audit Executive may vary across organizations.” [In Illinois, the Fiscal Control and Internal Auditing Act refers to this position as Chief Internal Auditor.]

Key Related Auditing Standards:

Performance Standard (PS) 2330 (Documenting Information) – Internal auditors must document relevant information to support the conclusions and engagement results.

PS 2330.A1 – The chief audit executive must control access to engagement records. The chief audit executive must obtain the approval of senior management and/or legal counsel prior to releasing such records to external parties, as appropriate.

PS 2400 (Communicating Results) – Internal auditors must communicate the results of engagements.

PS 2440 (Disseminating Results) – The chief audit executive must communicate results to the appropriate parties.

PS 2440.A1 – The chief audit executive is responsible for communicating the final results to parties who can ensure that the results are given due consideration.

PS 2440.A2 – If not otherwise mandated by legal, statutory, or regulatory requirements, prior to releasing results to parties outside the organization, the chief audit executive must:

- *Assess the potential risk to the organization;*
- *Consult with senior management and/or legal counsel as appropriate; and*
- *Control dissemination by restricting the use of the results.*

Key Practice Advisories (PA):

- *PA 2330.A1-1(Control of Engagement Records)*
- *PA 2330.A1-2 (Granting Access to Engagement Records)*
- *PA 2400-1 (Legal Considerations in Communicating Results)*
- *PA 2440-2 (Communicating Sensitive Information Within and Outside)*
- *PA 2440.A2-1 (Communications Outside the Organization)*

SIAAB Interpretation

The primary applicable auditing standard is Performance Standard (PS) 2330.A1 (Access to Engagement Records): *The chief audit executive must control access to engagement records. The chief audit executive must obtain the approval of senior management and/or legal counsel prior to releasing such records to external parties, as appropriate.*

As a general rule, unless access to internal audit records is established by law/statute, rule, regulation, agreement, or policy, the Chief Internal Auditor should consult with the chief executive officer and/or legal counsel and obtain approval, as appropriate, prior to releasing internal audit records outside the agency.

According to IIA Practice Advisory (PA) 2330.A1-1 (Control of Engagement Records): *Internal audit engagement records include reports, supporting documentation, review notes, and correspondence, regardless of storage media. Engagement records or working papers are the property of the organization. The internal audit activity controls engagement working papers and provides access to authorized personnel only.*

Internal audit records are property of the agency, and internal audit policies should explain which internal or external parties can be granted access to engagement records, and how requests for access to those records need to be handled.

When furnishing engagement records inside or outside the agency, the Chief Internal Auditor should, where possible, consider releasing documents in a form where they cannot be easily changed (e.g., as an image rather than in word processing format). For paper documents, the Chief Internal Auditor should release copies and keep the originals. The internal audit records should be labeled confidential and secondary distribution should be prohibited without permission. The label may note the records are exempt from disclosure under the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)).

Access within the agency

Internal audit often obtains highly sensitive information regarding exposures, threats, uncertainties, fraud, waste, mismanagement, illegal activities, abuse of power, misconduct, or other wrongdoings. Inappropriate release of such information may result in potentially significant consequences.

The Chief Internal Auditor decides to whom internal audit reports are released and the reports should include an authorized distribution list and restrictions on further distribution. Report recipients and personnel may request access to internal audit records, and the Chief Internal Auditor should consider adopting policies governing the release of information within the agency, including written agreements with the recipients where appropriate. Even when the Chief Internal Auditor delegates such responsibilities, he or she retains overall responsibility. See also PA 2330.A1-1 (Control of Engagement Records).

Access outside the agency

According to PA 2440.A2: *If not otherwise mandated by legal, statutory, or regulatory requirements, prior to releasing results to parties outside the organization, the chief audit executive must:*

- *Assess the potential risk to the organization;*
- *Consult with senior management and/or legal counsel as appropriate; and*
- *Control dissemination by restricting the use of the results.*

There are many circumstances (external audit, inspectors general, federal/regulatory entity) where the authority to access audit records is mandated. However, depending on the agency and the nature of engagement records for that agency, the Chief Internal Auditor may want to consider adopting policies governing the release of information outside the agency where access is not mandated. The policies may include:

- The process for requesting permission to disclose information outside the agency;
- The level of authorization required to disclose information outside the agency;
- Guidelines regarding permissible and prohibited disclosure;
- External parties authorized to receive information and the types of information they may receive; and,
- Related privacy regulations, regulatory requirements, and legal considerations for reporting information outside the agency.

Chief Internal Auditors may also consider a written agreement, where appropriate, with the intended recipient concerning the proper use and protection of the information being disclosed. Agreements may address copyright issues, intended use of the information, and limitations on further disclosure.

Access by external auditors

According to PA 2330.A1-1 (Control of Engagement Records), the Chief Internal Auditor approves access to engagement working papers by external auditors. Further, the Illinois State Auditing Act (30 ILCS 5/3-12) requires State agencies to cooperate with the Auditor General and make available to the Auditor General or his or her designated representative any record or information requested, without delay.

Access by external quality assurance reviewers

According to AS 1312 (External Assessments), external assessments must be conducted at least once every five years by a qualified, independent assessor or assessment team from outside the organization. SIAAB has adopted a process for completing quality assurance reviews, and provides a list of qualified and certified quality assurance reviewers. Consequently, it is necessary to disclose engagement records to the external assessor(s). Generally, external assessors will review engagement records onsite without the records leaving the agency. External assessors are required to sign confidentiality agreements prior to engaging in quality assurance review activities. See also https://siaab.audits.uillinois.edu/QAR_Program/

Access by Inspectors General

Inspectors General investigate allegations of fraud, waste, abuse, mismanagement, misconduct, nonfeasance, misfeasance, malfeasance, and/or violations of laws and rules. The State Officials and Employees Ethics Act (5 ILCS 430/20-10) grants each Inspector General jurisdiction over all officers and employees of, and vendors and others doing business with, the State agencies within the jurisdiction of the constitutional officer who appointed the Inspector General. Many agencies have a designated liaison with the Inspectors General, and Chief Internal Auditors may ask the Inspectors General to route requests and documentation through the designated liaison. However, whether requests go through a liaison or directly to internal audit is at the discretion of the Inspector General, as Inspectors General have the authority to request any information from any person deemed relevant in conducting an investigation (5 ILCS 430/20-20).

Access related to legal proceedings

Caution: Internal auditors should consult with legal counsel in matters involving legal issues.

Outside parties may seek access to internal audit records in different types of proceedings, including criminal prosecutions, civil litigation, tax audits, regulatory reviews, various government (state and federal) reviews, etc. Internal audit engagement records are generally produced under the presumption their contents are confidential and may contain a mix of facts and opinions. However, those who are not familiar with the agency or the internal audit process may misunderstand those facts and opinions. See also PA 2330-A1-2 (Granting Access to Engagement Records) and PA 2400-1 (Legal Considerations in Communicating Results).

Potentially, internal audit records that are not specifically protected may be accessed in legal proceedings or through court order. Legal requirements vary significantly in different jurisdictions. When there is a specific request for engagement records in relation to a legal proceeding, the Chief Internal Auditor should work with legal counsel in determining what to provide. See also PA 2330.A1-1 (Control of Engagement Records) and PA 2400-1(Legal Considerations in Communicating Results).

Access to federal or regulatory entities

Disclosure of engagement records and reports to federal or regulatory entities may be mandatory under laws, regulations, and/or agreements. The records and reports provided to federal and regulatory entities should be marked as confidential.

Voluntary disclosure to other external parties

There may be circumstances where parties outside the agency, such as other State agencies and boards, request internal audit documentation. Unless disclosure is already established or required (based on law, rule, agreement, etc.), the disclosure is *voluntary* on the part of the agency and the Chief Internal Auditor should obtain the approval of the chief executive officer and/or legal counsel, as appropriate, prior to the *voluntary* disclosure of internal audit documentation.

Where possible, if the *voluntary* release of internal audit documentation is permitted by the chief executive officer, legal counsel and/or Chief Internal Auditor, consider releasing summaries rather than reports or records (summaries are generally not an option for *mandatory* disclosures to external parties as required by law, court order, regulation, etc.). Recipients of voluntary disclosures should be advised of confidentiality requirements and of restrictions on further distribution.

Though the Freedom of Information Act (FOIA) exemption ordinarily applies to internal audit records voluntarily released outside the agency, there are circumstances that may negate the FOIA exemption. Therefore, depending on the nature of the engagement records, the Chief Internal Auditor should consult with legal counsel where appropriate. See also PA 2440.A2-1 (Communications Outside the Organization).

Whistleblowing

There are circumstances where an internal auditor may encounter a legal, professional, or ethical obligation to communicate information outside of normal reporting process, and potentially outside of the agency. This communication is commonly called “whistleblowing.” Whistleblowing can be internal (legal counsel, ethics officer, agency Inspector General, etc.) or external (Office of the Executive Inspector General, Attorney General, law enforcement, public official, etc.). The auditor should be aware of situations in which whistleblowing is required

(criminal offenses, public safety, etc.) and consider the ramifications of releasing sensitive information outside the normal chain of communication or outside the agency.

The auditor will need to consider the *Duty of Confidentiality* imposed by The IIA's Code of Ethics which requires internal auditors *to respect the value and ownership of information and avoid disclosing it without appropriate authority unless there is a legal or professional obligation to do so*. The auditor may seek the advice of legal counsel and, if appropriate, other experts (ethics officers, Inspectors General, the State Internal Audit Advisory Board, etc.). Ultimately, the professional decision to communicate outside the normal chain of communication needs to be based on a well-informed opinion that wrongdoing is supported by substantial, credible evidence and that a legal or regulatory imperative, or a professional or ethical obligation, requires further action. See also PA 2440-2 (Communicating Sensitive Information Within and Outside the Chain of Command).

The State Officials and Employees Ethics Act (5 ILCS 430/15) addresses whistleblower protection.

Fiscal Control and Internal Auditing Act (FCIAA)

Sec. 2001. Program of internal auditing.

Each designated State agency as defined in Section 1003(a) shall maintain a full-time program of internal auditing. In the event that a designated State agency is merged, abolished, reorganized, or renamed, the successor State agency shall also be a designated State agency. [30 ILCS 10/2001(a)]

Sec. 2002. Qualifications of Chief Internal Auditor.

(a) The chief executive officer of each designated State agency shall appoint a Chief Internal Auditor with a bachelor's degree, who is either:

- (1) a certified internal auditor by examination or a certified public accountant and who has at least 4 years of progressively responsible professional auditing experience; or*
- (2) an auditor with at least 5 years of progressively responsible professional auditing experience.*

(b) The Chief Internal Auditor shall report directly to the chief executive officer and shall have direct communications with the chief executive officer and the governing board, if applicable, in the exercise of auditing activities. All Chief Internal Auditors and all full-time members of an internal audit staff shall be free of all operational duties. [30 ILCS 10/2002]

Sec. 2003. Internal auditing program requirements.

(a) The chief executive officer of each designated State agency shall ensure that the internal auditing program includes:

- (1) A two-year plan, identifying audits scheduled for the pending fiscal year, approved by the chief executive officer before the beginning of the fiscal year. By September 30 of each year the Chief Internal Auditor shall submit to the chief executive officer a written report detailing how the audit plan for that year was carried out, the significant findings, and the extent to which recommended changes were implemented.*

(2) Audits of major systems of internal accounting and administrative control conducted on a periodic basis so that all major systems are reviewed at least once every 2 years.

The audits must include testing of:

(A) the obligation, expenditure, receipt, and use of public funds of the State and of funds held in trust to determine whether those activities are in accordance with applicable laws and regulations; and

(B) grants received or made by the designated State agency to determine that the grants are monitored, administered, and accounted for in accordance with applicable laws and regulations.

(3) Reviews of the design of major new electronic data processing systems and major modifications of those systems before their installation to ensure the systems provide for adequate audit trails and accountability.

(4) Special audits of operations, procedures, programs, electronic data processing systems, and activities as directed by the chief executive officer or by the governing board, if applicable.

(b) Each Chief Internal Auditor shall have, in addition to all other powers or duties authorized by law, required by professional ethics or standards, or assigned consistent with this Act, the powers necessary to carry out the duties required by this Act.

Illinois State Auditing Act

(30 ILCS 5/3-12)

Sec. 3-12. Cooperation of State agencies. All State agencies and their officers and employees shall promptly comply with, and aid and assist the Auditor General in the exercise of his or her powers and duties under this Act and the regulations adopted pursuant to this Act.

At the request of the Auditor General, each State agency shall, without delay, make available to the Auditor General or his or her designated representative any record or information requested and shall provide for examination or copying all records, accounts, papers, reports, vouchers, correspondence, books and other documentation in the custody of that agency, including information stored in electronic data processing systems, which is related to or within the scope of any audit or investigation under this Act.

The Auditor General shall report to the Legislative Audit Commission, the Speaker of the House of Representatives and the President of the Senate each instance in which a State agency fails to cooperate promptly and fully with his or her office as required by this Section.

The Auditor General may institute and maintain any action or proceeding to secure compliance with this Act and the regulations adopted hereunder.

Illinois Freedom of Information Act (FOIA)

(5 ILCS 140/7)

(1). *The following shall be exempt from inspection and copying:*

(m) *Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the*

request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies.

State Officials and Employees Ethics Act

(5 ILCS 430/15-10)

Sec. 15-10. Protected activity. An officer, a member, a State employee, or a State agency shall not take any retaliatory action against a State employee because the State employee does any of the following:

(1) Discloses or threatens to disclose to a supervisor or to a public body an activity, policy, or practice of any officer, member, State agency, or other State employee that the State employee reasonably believes is in violation of a law, rule, or regulation.

(2) Provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any violation of a law, rule, or regulation by any officer, member, State agency, or other State employee.

(3) Assists or participates in a proceeding to enforce the provisions of this Act.

(5 ILCS 430/20-10)

(c) The Executive Inspector General appointed by the Attorney General shall have jurisdiction over the Attorney General and all officers and employees of, and vendors and others doing business with, State agencies within the jurisdiction of the Attorney General. The Executive Inspector General appointed by the Secretary of State shall have jurisdiction over the Secretary of State and all officers and employees of, and vendors and others doing business with, State agencies within the jurisdiction of the Secretary of State. The Executive Inspector General appointed by the Comptroller shall have jurisdiction over the Comptroller and all officers and employees of, and vendors and others doing business with, State agencies within the jurisdiction of the Comptroller. The Executive Inspector General appointed by the Treasurer shall have jurisdiction over the Treasurer and all officers and employees of, and vendors and others doing business with, State agencies within the jurisdiction of the Treasurer. The Executive Inspector General appointed by the Governor shall have jurisdiction over (i) the Governor, (ii) the Lieutenant Governor, (iii) all officers and employees of, and vendors and others doing business with, executive branch State agencies under the jurisdiction of the Executive Ethics Commission and not within the jurisdiction of the Attorney General, the Secretary of State, the Comptroller, or the Treasurer, and (iv) all board members and employees of the Regional Transit Boards and all vendors and others doing business with the Regional Transit Boards.

The jurisdiction of each Executive Inspector General is to investigate allegations of fraud, waste, abuse, mismanagement, misconduct, nonfeasance, misfeasance, malfeasance, or violations of this Act or violations of other related laws and rules.

(5 ILCS 430/20-20)

Sec. 20-20. Duties of the Executive Inspectors General. In addition to duties otherwise assigned by law, each Executive Inspector General shall have the following duties:

(2) To request information relating to an investigation from any person when the Executive Inspector General deems that information necessary in conducting an investigation.