

SIAAB Guidance #07

Access and Disclosure of Engagement Records

Adopted December 13, 2016

Revised In Accordance with 2024 Standards – Effective January 7, 2025

**** Note: The State Internal Audit Advisory Board (SIAAB) requires Illinois Internal Auditors to follow the Global Internal Audit Standards (GIAS) of the Institute of Internal Auditors (IIA). The structure of GIAS consists of 5 Domains, 15 Principles and 52 Standards. Any references made to GIAS will begin with the Domain, then Principle followed by a (.) and then the Standard. For example, Domain II, Principle 3, Standard 4 would be referenced as GIASII 3.4.*

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.

The terms “Chief Internal Auditor,” “Chief Audit Executive,” “Director Internal Audit” or similar positions 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 GIAS and ensuring the quality of the performance of internal audit services. This document uses those terms interchangeably. 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. The Chief Internal Auditor or others reporting to the Chief Internal Auditor, will have the appropriate professional certifications and qualifications.

SIAAB Interpretation

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.

The primary applicable internal auditing standard is GIASII 5.2 which states, “Internal auditors must understand and abide by the laws, regulations, policies, and procedures related to confidentiality, information privacy, and information security that apply to the organization and internal audit function. Considerations specifically relevant to the internal audit function include:

- Custody, retention, and disposal of engagement records.
- Release of engagement records to internal and external parties.
- Handling of, access to, or copies of confidential information when it is no longer needed.”

GIASII 5.2 states, “Internal auditors must be aware of their responsibilities for protecting information and demonstrate respect for the confidentiality, privacy and ownership of information acquired when performing internal audit services or as the result of professional relationships. Internal auditors must understand and abide by the law as, regulations policies and procedures related to confidentiality, information privacy, and information security that apply to the organization and internal audit function.”

GIASII 5.2 also states, “Internal auditors must not disclose confidential information to unauthorized parties unless there is a legal or professional responsibility to do so.”

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. In many cases with regulatory bodies, the Chief Internal Auditor is given the authority to release records to those parties without additional approval. If this authority is given to the Chief Internal Auditor, it should be included in the Internal Audit Charter. In addition, disclosure of records must be made in accordance with a request from the Office of the Auditor General and its contracted auditors, an Office of the Inspector General or other law enforcement agency.

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 GIASII 5.2.

Access outside the agency

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

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. Specifically, 30 ILCS 5/3-12 of the Illinois State Auditing Act States, “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.”

Access by external quality assurance reviewers

According to GIASIII 8.4 (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.

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 430/20-10 and 5 ILCS 430/20-20).

Specifically, the State Officials and Employees Ethics Act states in (5 ILCS 430/20-10)(c),

“(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 states, “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.”

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.

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.

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.

GIASIV 11.3 states, “The chief audit executive must seek the advice of legal counsel and/or senior management as required before releasing final communications to parties outside the organization, unless otherwise required or restricted by laws and/or regulations.”

The Illinois Freedom of Information Act (FOIA) includes an exclusion from disclosure of audit related records. Specifically, FOIA states in (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.”

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.

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.

Internal auditors have access to confidential information in the course of exercising their duties and have a duty to ensure confidentiality. Therefore, internal auditors must respect the value and ownership of all information and records that they obtain and avoid disclosing them without the appropriate authority unless otherwise legally or professionally obligated 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.

The State Officials and Employees Ethics Act (5 ILCS 430/15) addresses whistleblower protection. Specifically, (5 ILCS 430/15-10) states,

“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.”