

**Remarks of Mary E. Anderson
before the Joint Government Reform Committee, February 24, 2009**

President Cullerton, Speaker Madigan, Members of the Committee, I appreciate this opportunity to be able to testify before you today regarding the transparency of the Offices of the Executive Inspectors General.

My name is Mary Anderson. I am an attorney whose private practice focuses on anti-corruption litigation. I was previously Deputy Inspector General in the Office of the Executive Inspector General for the Agencies of the Illinois Governor under Executive Inspector General Z. Scott. I was also deeply involved in the research and drafting of the State Officials and Employees Ethics Act in 2003 and its implementation in 2004 when I served as Senior Counsel to our former Governor. I understand the hopes for change that fueled that last effort at ethics reform, and the challenges we have faced in its implementation.

One of the most serious challenges to the effectiveness of the Offices of the Executive Inspectors General has been the forced secrecy of these offices. The silence we hear from the Executive Inspectors General is not by their choice. To the contrary, their silence has been dictated by statute.

In order to hold the Executive Inspectors General accountable, as well as the Constitutional Officers who appointed them, the General Assembly and the public must know the outcomes of their investigations into fraud, corruption and abuse. That can only be done with complete disclosure of the final outcome of the investigations of these Offices as well as the response and actions of the Constitutional Officer to the Executive Inspector General's recommendations.

Today I will outline for you the current state of the law here in Illinois as to what the Executive Inspectors General can report to you, the General Assembly, and to the public. I will outline for you the "best practices" of Inspectors General across the United States, including several states we can use as models here in Illinois. I will end with my recommendations for statutory change to the State Officials and Employees Ethics Act that will hopefully strengthen the accountability of the Executive Inspectors General and the Constitutional Officers.

The State of the Law in Illinois

The State Officials and Employees Ethics Act is the 2003 statute that created the Offices of Executive Inspectors General. Under the Ethics Act, once an investigation is complete, a Final Investigation Report from the Office of Executive Inspector General is delivered to the head of the State agency affected by the investigation as well as the Constitutional Officer. However, by law, these Final Investigation Reports are not allowed to be released to the public. The Act explicitly prohibits the Executive Inspector General and all employees under the Executive Inspector General from releasing any complaint, any final investigation reports, or any information in support of those reports, to the public. 5 ILCS 430/20-90(b), 20-95(b), (d). The only time a Final Investigation Report is allowed to be released to the

public is if the Executive Inspector General, through the Attorney General, has brought the complaint to the Executive Ethics Commission, a full hearing has occurred, and the Executive Ethics Commission has made a finding of wrongdoing. 5 ILCS 430/20-90(b). It is my understanding that since the inception of the Ethics Act, this has never occurred.

As a result of this hyper-confidential system, the General Assembly and the public has literally no idea the quality of the investigations that have occurred, the outcome of these investigations, and most importantly, what actions the Constitutional Officers have taken in response to an Executive Inspector General's finding of wrongdoing and recommendation for action.

Best Practices of Other States

Of those states that have an Office of Inspector General, Illinois has the least transparent system. The vast majority of other states have some level of transparency in their Final Investigation Reports, whether it is a general summary that removes the identity of the accused, to fully open reports that name the accused and witnesses, provides details of the results of the investigations, and outlines all recommendations and actions. The purpose of such transparency is to allow elected officials, including the state legislature, as well as the public, to hold the Inspector General accountable, and to hold the Executive Officers whose offices are under investigation accountable, as well.

The Association of Inspectors General is the national organization of local, state and federal inspectors general in the country. The Association of Inspectors General, in their model legislation, recommends that Final Investigation Reports of Inspectors General be completely public documents available for public review. The Association recommends that the confidentiality and identity of those individuals making the original complaint be protected, in order to create an incentive for whistleblowers to come forward, but that all other investigative findings be made available to the public.

I have identified four states that are similar in size and profile to Illinois who have successful inspector general systems that can be models of transparency for our state: New Jersey, Massachusetts, New York and Ohio.

New Jersey: N.J.S.A. 52:15B-1 et. seq.

New Jersey created their Office of Inspector General in 2005 and looked to Illinois as a model in creating their office. However, recognizing the challenges Illinois faced with its closed system, New Jersey chose to make all of its Final Investigation Reports public. While New Jersey does not have specific statutory language addressing the disclosure of Final Investigation Reports, the Inspector General has made it a policy to release all Final Investigation Reports to the public. The New Jersey Inspector General has from time-to-time redacted parts of a Final Investigation Report in order to protect the identification of cooperating witnesses and the confidentiality of ongoing investigations. These reports, regardless of whether the investigation was founded or unfounded, are posted on the New Jersey Inspector General's website the day they are released.

Massachusetts: M.G.L. c.12A §§ 1-15.

Massachusetts has the oldest Office of Inspector General in the country. The Final Investigation Reports of the Massachusetts Inspector General have been made public since the office's inception in 1981. By statute, all Final Investigation Reports, regardless of whether the complaint was founded or unfounded, are made public. However, if the complaint is unfounded, the identity of the accused is kept confidential and not released to the public. Also, any referrals made by the Inspector General to the Massachusetts Attorney General or the U.S. Attorney are not allowed to be made public. This is in order to protect any ongoing criminal investigation.

Massachusetts also requires the head of the Agency where the wrongdoing occurred to respond to the Inspector General's report in writing within 60 days. The Agency's response is also made public and is posted for public viewing with the Inspector General's Report. This publicly-required Agency response forces the Agency and the executive officers to be publicly accountable for correcting the wrongdoing discovered under their watch.

New York: N.Y.S. Exec. Law, Art. 4-A, §§ 51-55.

By statute, the New York Inspector General is required to make Final Investigation Reports public, but the Inspector General is given discretion to redact the report "as appropriate" to protect the confidentiality of witnesses as well as defer the release of some reports to protect the confidentiality of ongoing investigations. In practice, New York publicly releases all Final Investigation Reports, whether founded or unfounded, and even discloses referrals to local district attorneys.

Ohio: O.R.C. 121.41 – 121.52.

The state of Ohio has one of the most transparent Inspector General's offices in the country. All Final Investigation Reports, regardless of outcome, are made public. If the Report determines a wrongful act has occurred, the identity of the person who committed the act will be included in the report. The Inspector General does have discretion to designate all or part of a Final Investigation Report confidential only if it is reasonably necessary to protect the safety of a witness or to avoid disclosure of investigative techniques. However, the Report has to be clearly marked as Confidential so it is clear to the public that information has been redacted or withheld. This clear marking still requires the Inspector General to show that an investigation has been completed, but protects necessary information.

Recommendations

Based on the best practices of other Inspectors General across the United States, I recommend the following changes be made to the State Officials and Employees Ethics Act and to the reporting requirements of the Executive Inspectors General:

- **Public Disclosure of All Final Investigation Reports**

All Final Investigation Reports, regardless of the outcome of those investigations, should be made available to the public. In order to protect those individuals who have been investigated where the Executive Inspector General did not find evidence of wrongdoing, the identities of the wrongfully accused should be kept confidential and

not released to the public. However, if a person was found to have engaged in wrongful conduct, their identity should be included in the report. With all Final Investigation Reports made public, the Executive Inspectors General can be held accountable for their actions and recommendations. Yet by redacting the identity of the wrongly accused, we can still balance the rights of the individual.

- **Discretion Given to Executive Inspector General to Redact Information in Limited Circumstances**

The Executive Inspector General should be allowed, at his or her discretion, to redact information from a Final Investigation Report in the following situations:

- To protect the identification of the Complainant and any cooperating witnesses;
- To protect any ongoing investigations and/or investigatory techniques;
- Any referrals or cooperation with any prosecutorial agencies. This is to protect any subsequent criminal investigation.

- **All Redacted Reports and Information Should Be Clearly Marked as “Confidential”**

If an Executive Inspector General does redact a Final Investigation Report, or parts of a Report, such redactions should be clearly marked as “Confidential” in order to signal to the public that information has been removed. Therefore, the Executive Ethics Commission, the General Assembly and the public will know that an investigation has been completed and can decide whether to challenge a redaction.

- **Agency Responses Should Be Made Public**

When there is a finding of wrongdoing, the Director of the Agency in question, or if at the executive level, the Constitutional Officer, should be required to provide a written response to the Executive Inspector General's Final Investigation Report outlining what steps will be taken in response. That Agency written response should be made public, as well. Such public responses will force state agency leaders to be accountable for the wrongdoing discovered in their offices.

Illinois has just lived through the most significant upheaval in its government and the public's faith in its elected officials is perilously thin. Illinois already has a powerful engine it can use to help uncover any additional fraud, corruption and abuse in state government and to prevent such abuse in the future: the Offices of the Executive Inspector General. However, the Executive Inspectors General are completely undermined and weakened when they cannot make the results of their investigations public. By keeping the results of these investigations secret, wrongdoers are allowed to continue on with their corrupt behavior without consequences. The General Assembly, and the public, need the information from these investigations in order to hold our elected officials accountable and to prevent deeper and more widespread corruption in the future.

I welcome the opportunity to answer any questions you have and to work with each of you to craft legislative language to address these issues of transparency in the Offices of Executive Inspectors General.

Thank you again for this opportunity to speak to you today.