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**DWIGHT KAY**

STATE REPRESENTATIVE • 112<sup>TH</sup> DISTRICT

June 10, 2014

Honorable David Reis  
State Representative  
109<sup>th</sup> District  
P.O. Box 189  
Olney, IL 62450

Dear Representative Reis,

For some time I have had a team of investigators reviewing the documents gathered by the Auditor General with respect to the audit he conducted pertaining to the NRI and the IVPA et al.

In April 2014, I asked Garrett Discovery, to review the documents and electronic files provided to me from the Auditor General. I also asked Garrett Discovery to visit with the Auditor General's Office to determine how documents were retrieved and specifically, from what source(s).

Enclosed are the findings that Garrett Discovery provided to me pertaining to the work I asked them to perform. As a member of the Oversight Committee it should concern you, as well as all the members of the Committee, that all relevant information (all emails in particular) may not have been obtained by the Auditor General. While I commend the Auditor General for the work he accomplished pursuant to your House Resolution, it troubles me to think that deleted emails and/or emails in general were not requested directly from CMS. It likewise is troubling that the Oversight Committee has no way to determine if the Auditor General was provided all of the information available from a department or agency that provided information.

To assure that the Oversight Committee accomplishes it's assigned task and exercises due diligence in the process, it seems clear that information pertaining to the NRI and IPVA be subpoenaed from CMS immediately.

In your capacity as a Committee member I asked that my letter and the Garrett Discovery Report be read into the record.

Sincerely,

A handwritten signature in black ink, appearing to read "Dwight Kay".

Dwight Kay  
State Representative



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The Honorable Dwight Kay  
Illinois House of Representatives  
401 Stratton  
Springfield, Illinois 62706

June 10, 2014

Dear Mr. Kay,

On April 16, 2014 you requested that our office assist you in obtaining, reviewing and organizing documents and electronically stored information obtained by the Illinois Auditor General during the Performance Audit of the Illinois Violence Prevention Authority (IPVA) Neighborhood Recovery Initiative (NRI).

On May 19, 2014 by your authority I met with Illinois Auditor General Audit Manager Mike Maziarz and discussed the IPVA/NRI Performance Audit. I was given unfettered access to the audit materials absent documents and Electronically Stored Information (ESI) ordered to be redacted. I requested copies of certain materials and subsequently requested that all materials be provided.

Thereafter, I received from your office four DVD's containing audit materials in electronic format totaling 14,057 pages provided to you by the Auditor General. I loaded the ESI into an electronic discovery review platform, processed the files for optical character recognition and bates stamped each.

You initially asked if I considered the production of emails to be complete. After a cursory review, I reported to you that I had noticed gaps in conversations where emails were sent with no responses and conversations were broken due to missing email chains. The production did not appear complete and needed further analysis.

Additionally, the Auditor General Performance Audit stated, "according to the former IVPA Director, IVPA selected the communities to be served by NRI based on an analysis performed by the Department of Human Services (DHS) for the Safety Net Works

program. However, IVPA and DHS could not locate the analysis used nor could IVPA provide any other documentation to auditors showing how Chicago communities were selected to participate in NRI." I considered this quote curious and would have expected to find emails involving the selection of grantees.

On June 3, 2014 you asked that I review the ESI and documents in order to answer three questions:

- 1. Did Central Management Services (CMS) provide all of the emails requested by the Auditor General?*
- 2. What other sources of Electronically Stored Information (ESI) may have been relevant to the Auditor General's Performance Audit?*
- 3. What methods of discovery are normally used when there is a lack of trust?*

On June 10, 2014 I completed my analysis of the ESI and documents provided by the Auditor General.

I have the following to report in response to your questions:

\*Note – Background information is given below in order to enhance your understanding of my answers to your questions.

- 1. Did Central Management Services provide all of the emails requested by the Auditor General?*

### **The Electronic Discovery System at Central Management Services**

In 2005, the State of Illinois began an Information Technology (IT) Rationalization and Consolidation initiative to improve state IT systems and efficiencies. As part of this IT effort most state agencies were converted to a @illinois.gov email address allowing the Illinois Department of Central Management Services to control and maintain a single email system. The solution included an enterprise email vaulting/archiving service and full electronic discovery capabilities costing the taxpayers 2.4 million dollars. An off-site disaster recovery (DR) component for selected email users, supporting both email and mobile messaging (Blackberry) was established to back-up the entire solution.

In 2008, enterprise email vaulting/archiving service and full electronic discovery capabilities were enabled for all @illinois.gov email accounts. Prior to this system, an electronic discovery search would routinely take days and weeks to accomplish. Most requests can now be handled in minutes.

IVPA and CMS employees have had @illinois.gov email accounts since 2010 and those emails are stored on the Central Management Services email servers and can be searched using the Electronic Discovery System.

Reference:

[https://www.illinois.gov/bccs/policies/Documents/ESI\\_Retention\\_Policy.pdf](https://www.illinois.gov/bccs/policies/Documents/ESI_Retention_Policy.pdf)

<http://www.nascio.org/awards/nominations/2010/2010IL5-BCCS%20PIM2010%20final%20submission.pdf>

### **The policies governing use of the Electronic Discovery System**

CMS provides electronic discovery services to all state agencies who have @illinois.gov email addresses. State of Illinois email users and administration personnel do not have the authority, expertise and software necessary to search CMS email servers for deleted or archived mail. Only the CMS Personal Information Management (PIM) group has such authority, expertise and software necessary to search CMS email servers for live, deleted and archived mail. Only state agency executives have the authority to request that the CMS PIM group search their own agency employee emails for relevant information.

### **There is a high probability the requestor may not receive all of the Electronically Stored Information**

CMS PIM staff will only search and respond to inquiries from agency executives. The requestor of emails must provide a detailed request. In recent Illinois Circuit Court cases the CMS PIM has proven to only search for ESI exactly as they are asked. For instance, if a request was made for "all emails" the response from CMS would not include backed up, archived, deleted or draft emails regardless of the subpoena or FOIA request using plain language such as "all emails". I have

seen this strategy used in civil cases in both state and federal courts in order to hide documents from discovery. This is why the courts assign special masters or electronic discovery experts to oversee the discovery process.

### **The electronic discovery system was under direct control of one of the subpoenaed witnesses before the Audit Commission**

Malcolm Weems was the Director of CMS and was in control of the very system that contained the ESI requested by the Auditor General. The Auditor General requested from the IVPA attorney access to employee emails, but was unable to verify whether or not all emails were provided. If Mr. Weems had been involved in wrongdoing it would be highly unlikely that he or his staff would be willing to deliver materials to the Auditor General showing any wrongdoing.

### **Archived vs Deleted Emails**

Central Management Services maintains two software programs that aid in the storage, search and production of emails. The Symantec Enterprise Vault (EV) is a sophisticated software program that saves all emails to comply with the Illinois State Records Act. The second is the Electronic Discovery Accelerator program managed by the PIM group that can search for live, archived and deleted emails including those emails no longer available to the email program user.

To date, no one has been able to answer whether or not the emails provided to the Auditor General for use in the Performance Audit included all emails from the backup tapes or the EV.

*Based on the information above, it is my opinion the Auditor General was not given all of the emails requested to conduct the Performance Audit.*

## ***2. What other sources of Electronically Stored Information (ESI) may have been relevant to the Auditor General's Performance Audit?***

Central Management Services provides laptops, desktops and mobile phones (Blackberry) to some employees. A few select employees are allowed to use

personal devices to connect to the state's networks. The use of personal devices has created a situation in which the data and or device may not be subject to discovery requests from the court or FOIA. Additionally, deleted files can be recovered with forensic tools from laptops and mobile devices.

*It is my opinion that relevant data may exist on state and personally owned mobile devices, laptops and servers.*

**3. *What methods of discovery are normally used when there is a lack of trust?***

I have worked on cases in which opposing counsel has expressed trust issues in discovery. Often courts will assign a special master (often an attorney) or an Electronic Discovery Expert to navigate the technology and write an unbiased opinion of whether or not the parties have complied with all aspects of the court ordered discovery.

I highly suggest that an independent Electronic Discovery Expert search the state's network and return the collected ESI and documents to the Commission.

Andrew Garrett  
eDiscovery / Computer Forensic Expert



Signature

June 10, 2014

Date