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**RESPONDING TO REQUESTS FOR  
INTERVIEWS BY INVESTIGATORS FROM THE  
OFFICE OF THE EXECUTIVE INSPECTOR GENERAL**

BY:.....

In 2003, the General Assembly created the Office of Executive Inspector General. While the prime purpose of the Office is enforce compliance with the new State Ethics statute, the legislation itself gives the Inspector Generals the authority to investigate “waste, fraud, abuse, mismanagement, nonfeasance, misfeasance and malfeasance” by state officials and employees. The office has a staff of investigators, mostly retired law enforcement types. The Office does not have the power to investigate anonymous allegations or allegations which are more than a year old.

The statute allows an investigator for the Office to “request” information and interviews. 5 ILCS 430/20-20(2). It also gives the Office the power to issue administrative subpoenas to compel testimony and the production of documents. 5 ILCS 430/20-20(3). If a subpoena is issued, the person responding to the subpoena may assert any rights or privileges available under federal and state law. 5 ILCS 430/20-35. If an official or employee refuses to cooperate with a subpoena, the Office may recommend that the employee or official be disciplined or discharged. 5 ILCS 430/20-70. If the University decides to follow that recommendation, the official or employee has available any rights guaranteed by state and federal law. Id. Any discipline of an employee as a result of a recommendation must comply with the provisions of a collective bargaining agreement covering the employee. 5 ILCS 430/20-40.

If the Office determines that the law has been violated, there is an extensive statutory procedure for litigation of the alleged violation. 5 ILCS 430/20-50.

The Office has taken an expansive view of its authority to interview employees and demand documents. Employees, though, should be cautious, especially if they have been requested to produce documents that they believe are confidential. The statute allows the Office to “request” interviews and documents. That language means the following:

- the Office does not have the right to place an employee under arrest;
- the Office does not have the right to physically threaten or intimidate an employee;
- the Office cannot order an employee to appear for an interview or to hand over documents;
- the Office does not have the right to discipline an employee for not agreeing to the request for an interview or for documents;
- the employee has the right to terminate the interview if he or she desires;
- the employee has the right to place conditions on the interview, such as having a lawyer or a union representative present or tape recording the interview.

The investigator may threaten an employee that it is illegal to refuse to cooperate and that the Office may recommend discipline or discharge for such lack of cooperation. These threats apply only to the situation where an employee has failed to respond to a valid administrative subpoena. Moreover, it is up to the University to decide whether to proceed with a recommendation of discipline or discharge. If the University proceeds, it must follow the provisions of our contract.

If the employee exercises these rights and the Office obtains an administrative subpoena, the employee should consult a lawyer as soon as possible to determine what statutory rights he or she has in response to the subpoena.

Before beginning an interview, the employee should ask three questions:

1. Can the statements made in the interview lead to criminal charges against him or her?
2. Can the statements made in the interview lead to disciplinary action?
3. Is the investigator aware of the collective bargaining agreement that covers the employee and the employee's rights under that agreement and under state and federal law?

If the answer to the first two questions is "yes," the employee is well advised to terminate the interview immediately and call for help.

With respect to the third question, the law requires that inquiries of employees be "conducted with awareness of the provisions of a collective bargaining agreement that applies to the employees of the relevant State agency and with an awareness of the rights of the employees as set forth by State and federal law and applicable judicial decisions." 5 ILCS 430/20-40.

If the investigator answers that he is not aware of the contract and state and federal law, the employee is well advised to tell him that the law requires him to be aware of these things and to terminate the interview on that basis.