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August 14, 2014
VIA EMAIL AND U.S. MAIL

The Honorable Jason Barickman, Co-Chair
The Honorable Frank J. Mautino, Co-Chair
c/o Jane Stricklin, Executive Director
Legislative Audit Commission
622 Stratton Building
Springfield, IL 62706

Dear Senator Barickman and Representative Mautino,

As a follow-up to our telephone conference on Friday, August 8, 2014, I am writing to provide additional information about our upcoming production and address other issues we discussed during the conversation. In particular, I am writing to provide further information about the emails in the possession of Dr. Toni Irving, including how Dr. Irving came to be in possession of these emails, as well as the search terms and process we have used to determine responsiveness to the subpoena issued to Dr. Irving by the Legislative Audit Commission (the "Commission"), and a summary of the search results in terms of numbers of hits. In addition, as you requested, I am also setting forth the basis of any privilege that will likely be asserted in connection with certain of these documents.

As I indicated during the Commission hearing last month, Dr. Irving is in possession of numerous emails which she received from her former employer. In the summer of 2013, when Dr. Irving was preparing to end her employment with the State of Illinois (the "State"), she asked an IT person in the Governor's Office, Jose Ibarra, if he could save her documents on a disk so that she could take them with her. Ibarra indicated that once Dr. Irving's employment ended and her account was archived, he could then make a copy of Dr. Irving's files and emails for her, which Dr. Irving assumed to be a standard practice when employees left state service. Dr. Irving believes that she received the materials from Ibarra, which were in the form of three CDs, in the mail within a few weeks of her departure.

The three disks contain a total of 9 PST files, although, as I indicated during our discussion, two of the PST files appear to be unreadable. The seven remaining PST files contain approximately 107,892 emails and attachments. To be clear, and as I have repeatedly indicated, these disks do not simply contain NRI-related materials; rather, it is my understanding that the disks contain all of Dr. Irving's communications then in existence, for the entire period of her employment.

After discussions and email correspondence with Jane Stricklin, Executive Director of the Commission, we applied the following search terms to the approximately 107,000 emails mentioned above in order to identify the responsive documents:



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"high risk communities" OR "Safe Communities Initiative" OR "Violence Prevention Initiative" OR "Neighborhood Recovery Program Save Our Youth" OR "Violence Prevention" OR "Safety Net Works" OR "NRI Neighborhood Recovery Initiative" OR "Mentoring" OR "Illinois Violence Prevention Authority" OR "IVPA" OR "Stop the Violence Commission" OR "Chicago Area Project"

This search resulted in 7,366 emails and attachments. Please note that Ms. Stricklin's email communication to me also referenced additional search terms that we considered as modifiers/restrictors for the search terms identified above, as follows:

"Alderman, Aldermen, Austin, West Chicago, South Shore, Auburn Gresham, Englewood, Breater Brand Crossing, Roseland, Humboldt Park, North Lawndale, West Garfield Park, Logan Square, Pilsen-Little Village, Woodlawn, Grand Boulevard, Rogers Park, Brighton Park, Albany Park."

However, it is apparent that running these search terms in conjunction with the initial search terms that yielded the 7,366 emails and attachments would not increase that number of responsive documents, as any such responsive documents would already be picked up by the initial terms. By way of example, a search for a document that contained NRI and also North Lawndale would be picked up simply by a search that included NRI.¹

As I also indicated, I have had discussions with John Schomberg, General Counsel, Office of the Governor, which culminated in a letter we received relating to a potential State attorney-client privilege. To be clear, Dr. Irving is not asserting any privilege with respect to the documents. Rather, Mr. Schomberg has indicated that the documents possessed by Dr. Irving are copies of state documents, and that these documents are protected by a potential privilege belonging to the State:

"Given that the documents are copies of State of Illinois emails, to the extent any of those documents are protected attorney-client communications, that privilege remains and lies with the State of Illinois."

¹ Ms. Stricklin's email also suggested the proposed phrase "Summer Youth Program," but we do not believe this term is likely to yield documents relevant documents, and consequently did not employ that term.



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In separate correspondence, Mr. Schomberg forwarded to me a list of 36 attorneys, from various state agencies, "most likely...to have participated in attorney-client communications [with] Toni Irving," as follows:

Allan Abinoja OR Rukhaya AliKhan OR Jason Boltz OR Jonathan Gunn or Elizabeth Paton OR Jennifer Koehler OR Natalia Delgado OR Era Lauder milk OR Jay Stewart OR John Schomberg OR Adam Braun OR Lola Dada-Olley OR Velisha Haddox OR Iris Chavira OR Rukhaya AliKhan OR Sheila Henretta OR David Hall OR Roma Larson OR Dixie Peterson OR Janet Ahern OR Beth Solomon OR Sean O'Brien OR Junaid Afeef OR Simeon Kim OR Andrew Tessman OR Lisa Stephens OR William Barnes OR Joe Rose OR Kenneth Tupy OR Ken Tupy OR Beth Compton OR Brian Dunn OR Mary-Lisa Sullivan OR Gail Niemann

When we ran this list of attorneys against the 7,366 emails triggered by our search, we identified 1,394 potentially privileged emails. Accordingly, as referenced in Mr. Schomberg's letter, we sent the 1,394 "potentially protected emails" to Mr. Schomberg,² for review by the State, in order to determine which of the emails the State believes to be privileged. We have since received back from the State these same documents sorted into four categories: "responsive and privileged," "responsive and non-privileged," "non-responsive and privileged," and "non-responsive and non-privileged." We are in the process of reviewing these documents, as well as the 5,972 emails and attachments which were not triggered by our application of attorney names, at this time.

Again, any privilege being asserted here belongs, if applicable, to the State, and not to Dr. Irving. Therefore, it is not our intention to create and produce a privilege log ourselves. I will reach out to John Schomberg about this request once we have had an opportunity to review the documents, but recommend that you contact him about privilege issues as well, and in particular your request for a privilege log.

In any event, I will let Ms. Stricklin know if we encounter any additional difficulties with the production, or are unable to produce all/some of the documents through the process described above by August 29, 2014. I also note that we will be producing all hard-copy documents in Dr. Irving's possession that are responsive to the subpoena, and that we are not producing emails I received from Ms. Stricklin, and a

² Due to the manner of production, these 1,394 emails sent to the State actually appeared as a different number of documents, but are the same items that resulted from application of the attorney names to the 7,366 emails triggered by our search.



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disk I received from Mr. Schomberg, which I understand contains the sub-set of documents already produced by the State pertaining to Dr. Irving.

Finally, I note that the next Committee hearing has been set for October 8, 2014. Please note that I have a previously scheduled commitment in the northern suburbs that morning, and will not be able to attend the hearing in Chicago until at least 10:30 am. Both Dr. Irving and I will be available at that hour.

Regards,

DLA Piper LLP (US)



Jonathan D. King

JDK:mlh