

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

In re: ERIC KNUTH

)

OEIG Case # 08-00687

OEIG FINAL REPORT (REDACTED)

Below is a final summary report from an Executive Inspector General. The General Assembly has directed the Executive Ethics Commission (“Commission”) to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut its factual allegations or legal conclusions before the Commission.

The Commission received a final report from the Governor’s Office of Executive Inspector General (“OEIG”) and a response from the agency in this matter. The Commission redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Governor’s Executive Inspector General and to Eric Knuth at his last known addresses.

These recipients were given fifteen days to offer suggestions for redaction or provide a response to be made public with the report. Certain information contained in the proposed public response may have been redacted in accordance with the Commission’s determination that it should not be made public. The Commission, having reviewed all suggestions received, makes this document available pursuant to 5 ILCS 430/20-52.

This investigation involved several different matters and eight employees of Eastern Illinois University. The Commission finds the alleged conduct of one of these employees, Eric Knuth, to be particularly egregious and makes this redacted report available to the public. Significant portions of this report have been redacted, including descriptions of activity by the other seven employees and allegations of wrongdoing that were unfounded.

FINAL REPORT

I. BACKGROUND

The Office of Executive Inspector General (“OEIG”) received allegations that Eastern Illinois University (“University”) employees [three names redacted], Eric Knuth, [four names redacted] engaged in an array of inappropriate conduct. [Three names redacted] and Mr. Knuth

allegedly used University computer equipment to access pornography and[/or] other inappropriate material. Additionally, [three names redacted], Mr. Knuth, [three names redacted] allegedly abused time by working fewer hours than they each reported and also [unfounded allegations redacted]. [Unfounded allegations redacted.]

[This section has been redacted because actions of the employee involved did not result in a suspension of three days or more, and, in the opinion of the Commission, are appropriately redacted.]

Below is an organizational chart reflecting the positions of the investigative subjects:

[Redacted organizational chart identifying employees not subject to release.]

[This section has been redacted because actions of the employee involved did not result in a suspension of three days or more, and, in the opinion of the Commission, are appropriately redacted.]

II. INVESTIGATION

A. University Computer and Email Misuse

The OEIG seized and reviewed [three names redacted], and Mr. Knuth's University computers and obtained copies of their University email. The OEIG analysis disclosed material seemingly unrelated to University business in these individual's computer hard drives and a variety of inappropriate emails.

i. Examination of [redacted's] Computer

[This section has been redacted because actions of the employee involved did not result in a suspension of three days or more, and, in the opinion of the Commission, are appropriately redacted.]¹

ii. Examination of [redacted's] Computer

[This section has been redacted because actions of the employee involved did not result in a suspension of three days or more, and, in the opinion of the Commission, are appropriately redacted.]

iii. Examination of [redacted's] Computer

[This section has been redacted because actions of the employee involved did not result in a suspension of three days or more, and, in the opinion of the Commission, are appropriately redacted.]²³⁴

¹ [Footnote redacted].

² [Footnote redacted].

³ [Footnote redacted].

iv. *Examination of Eric Knuth's Computer*

The analysis of Mr. Knuth's email account disclosed data similar to that of the aforementioned individuals. Among the hundreds of personal emails were video game download confirmations and messages regarding the purchase of children's bicycle parts. In addition, Mr. Knuth's University laptop contained 1,665 sexually explicit files.⁵

v. *Subject Interviews Relating to Computer and Email Misuse*

[This section has been redacted because actions of the employee involved did not result in a suspension of three days or more, and, in the opinion of the Commission, are appropriately redacted.] [Redacted] said she did not believe there was a policy governing University computers. Finally, Mr. Knuth said he believed that personal computer use was permissible so long as it adhered to "ethics laws" and said he thought all of his use complied with these laws.

vi. *[Redacted]*

[This section has been redacted because actions of the employee involved did not result in a suspension of three days or more, and, in the opinion of the Commission, are appropriately redacted.]

B. Abuse of Time Allegation and Timekeeping Supervision

i. *OEIG Surveillance*

In order to determine whether any of the subjects violated University policy regarding timekeeping, OEIG investigators conducted surveillance on [three names redacted], Mr. Knuth, [and three names redacted] over a five-day span between October and December 2008.⁶ The OEIG surveillance revealed that each subject was on campus less than the required minimum of 7.5 hours on at least one occasion during this time period. Additionally, each individual took at least one lunch break in excess of one hour. In summary, the extended lunches and time away from campus was as follows:

Subject	Total Unaccounted Time
[redacted]	11 hours and 31 minutes
[redacted]	7 hours and 43 minutes
[redacted]	4 hours and 43 minutes
Eric Knuth	5 hours and 13 minutes
[redacted]	5 hours and 37 minutes
[redacted]	2 hours and 45 minutes

⁴ [Footnote redacted].

⁵ Over 300 of these files were images of children engaging in sexual activity. [Redacted] it was determined that the images in question were animated. [Redacted].

⁶ Surveillance took place on October 16-17, 2008, November 19-20, 2008, and December 16, 2008.

[redacted]	1 hour and 44 minutes
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ii. Review of the Information Technology Employee Timesheets

OEIG investigators obtained copies of [three names redacted], Mr. Knuth's, [and three names redacted's] timesheets for the OEIG surveillance period. These documents reflected either the total number of hours worked on a particular day or whether any benefit time was used. According to these records, only [redacted] utilized benefit time on any surveillance day.⁷ The other employees recorded working full days. No subject that OEIG investigators surveilled requested compensatory time for any of the days OEIG investigators conducted surveillance.

iii. Interview of [redacted] Relating to Timekeeping

[Name and title redacted] informed OEIG investigators that University timekeeping hinges on an employee's position classification. [Redacted] noted that [one employee] is an Administrative and Professional ("Professional") employee and that there are "not too many rules for [him]." On the other hand, [redacted] said that [two redacted employees], Mr. Knuth, [and three redacted employees] are Civil Service staff and therefore must work 37.5 hours each week.

iv. Interview of [redacted] Relating to Timekeeping

[Redacted], informed OEIG investigators that she encountered problems when attempting to verify Information Technology employees' time use. As a result, [redacted] approached [redacted] regarding how to handle the issue. According to [redacted], [redacted] told her to submit the timesheets without the requests.

v. Subject Interviews Relating to Timekeeping

In their respective interviews with OEIG investigators, [three names redacted], Eric Knuth, [and three names redacted] each said they never abused time and always adhered to University timekeeping policy. [Redacted] noted that Information Technology staff, himself included, often worked more than the mandatory 7.5 hours daily, but that his scheduled work day is from 8:30 a.m. until 5:00 p.m. OEIG investigators presented each individual with the surveillance data reflecting that they may not have worked full days. In response, [three names redacted], Mr. Knuth, [and two names redacted] each said they subsidized their absences on those dates with additional work at night or on weekends. OEIG investigators asked each interviewee for specific information regarding when that work was performed (at nights or on weekends). However, none of the individuals could provide any information. [Two names redacted] noted that their extended lunch breaks may have been "working lunches," which meant that they discussed University business. According to [two names redacted], there was no need to utilize benefit time for their absence if that were the case.

With respect to the supervision of the aforementioned timekeeping issues, [four names redacted], each informed OEIG investigators that they did not monitor their subordinates'

⁷ [Redacted] utilized 2 hours and 30 minutes of benefit time on October 17, 2008.

timekeeping. [Redacted] informed OEIG investigators that he did not concern himself with timekeeping as long as his employees completed their assignments. Similarly, [redacted] noted that he did not require employees to use benefit time unless they missed the entire morning. [Redacted] said his staff works in excess of the 7.5 hour daily requirement. As a result, he said he believed that they earned some scheduling leeway. Both [two names redacted] asserted that they merely applied the rules that [redacted] set forth regarding morning tardiness.

C. Subordinate Evaluations

[This section concerns allegations against employees not subject to release of information.]

D. Retaliation Allegation

[This section contains allegations that were not founded.]

E. Consumption of Alcohol Allegation

[This section contains allegations that were not founded.]

III. ANALYSIS

A. University Computer and Email Use Policy

University policy, in particular Internal Governing Policies (“IGP”) 128 and 129, state that staff members must limit their computer and email use to legitimate administrative activities, defined as “work performed to carry out official [University] business.” There is no policy exception for minimal staff personal use or personal use during unpaid time.

- i. [Two names redacted], and Eric Knuth’s Inappropriate Use of University Computers and Emails*

[Two names redacted], and Mr. Knuth each utilized their University laptops and email accounts for personal purposes. [Redacted] computer contained enough video games and mp3 music files to fill 59 compact disks. Moreover, his University email account included an archive of over 100 personal messages. [Redacted’s] computer contained a variety of mp3s and hundreds of obviously personal emails. Finally, Mr. Knuth maintained hundreds of personal emails and over 1,600 pornographic images on University servers and hard drives. None of these employees’ respective duties required using video games, pornography, music files, or personal emails. University policy clearly states that employees are to limit their computing to official business and [two names redacted], and Mr. Knuth each did not. Accordingly, the allegation that they improperly used University computer equipment and email is **FOUNDED**.

- ii. [Redacted]*

[This section has been redacted because actions of the employee involved did not result in a suspension of three days or more, and, in the opinion of the Commission, are appropriately redacted.]

B. University Timekeeping Policy

University employee work schedules depend on positional classification. For example, there is no policy establishing mandatory working hours for Professional employees. Conversely, BTR II(C)(2)(a), BTR II(C)(4), and IGP 35 provide that Civil Service employees must maintain a 37.5 hour work week divided evenly between the five working days. Furthermore, IGPs 6 and 7 state that any deviation from the typical work schedule must carry an excuse derived from sick or vacation leave regardless of the absent employee's positional classification. It inherently follows that recording a day as worked when in fact the employee was absent constitutes an abuse of time.

i. [Redacted's] Failure to Follow Timekeeping Policy

During his OEIG interview, [redacted] said that he worked from 8:30 a.m.-5:00 p.m. daily. Therefore, any arrival after 8:30 a.m. or departure prior to 5:00 p.m. without benefit use would violate the relevant timekeeping rules. During the OEIG surveillance, [redacted] failed to work those hours on four occasions. His timesheets indicated that he did not utilize benefit time on any of these dates. Each of those instances is an example of [redacted's] failure to properly use benefit time to reflect his observed absence. As University policy requires Professional employees to report leave time used and he did not, the allegation of time abuse relative to [redacted] is FOUNDED.

ii. [Two names redacted], Eric Knuth's, [and three names redacted] Failure to Follow Timekeeping Policy

[Two names redacted], Mr. Knuth, [and three names redacted] each informed OEIG investigators that they complied with University timekeeping policies. Nonetheless, every interviewee failed to work 7.5 hours on at least four of the five OEIG surveillance days. Only one individual ([redacted]) used benefit time on any of those days. When questioned regarding these inconsistencies, each person responded that he/she worked late or from home to complete the 7.5 hour work day. However, none of the timesheets reflected additional work for any individuals on any of the days surveillance was conducted. Additionally, University policy, specifically IGP 35, prohibits "early departure" and "lateness," with each term necessarily defining campus as the work arena. In light of these provisions, completing part of a shift at home cannot comply with University rules. As employees must accurately report leave time and these employees did not, the time abuse allegation against [two names redacted], Mr. Knuth, [and three names redacted] is FOUNDED.

C. University Timekeeping Supervision Policy

University policy, in particular IGPs 6 and 177, provides supervisors with an affirmative duty to disclose any inaccurate subordinate filings, including work reports such as timesheets. Therefore, it is self-evident that they are not to encourage or ratify employees ignoring reporting requirements. However, this is exactly what each above-mentioned subject each did. [Redacted] said that he allowed Information Technology employees to arrive up to 3.5 hours late without using benefit time. [Two names redacted] stated that they adopted this practice as their own. When apprised of these issues, [a supervisor] asked [redacted] to process the questionable timesheets nonetheless. As a result, many Information Technology employees admitted tardy arrival without corresponding leave time. [Four names redacted] each failed to correct these timekeeping flaws, which is a violation of University policy.

D. University Performance Review Policy

[This section has been redacted because actions of the employee involved did not result in a suspension of three days or more, and, in the opinion of the Commission, are appropriately redacted.]

E. State Officials and Employees Ethics Act Retaliation Provisions

[This section contains allegations that were not founded and, in the opinion of the Commission, are appropriately redacted.]⁸

F. University Alcohol Policy

[This section contains allegations that were not founded and, in the opinion of the Commission, are appropriately redacted.]

IV. RECOMMENDATIONS

The OEIG makes the following conclusions:

- **FOUNDED** – [three names redacted], and Eric Knuth made personal use of University computers and email.
- **FOUNDED** – [three names redacted], Eric Knuth, [and three names redacted] abused time.
- **FOUNDED** – [four names redacted] did not ensure subordinates accurately reported time.
- **FOUNDED** – [two names redacted] did not regularly conduct subordinate performance evaluations.
- **UNFOUNDED** – [unfounded allegations, some against employees, in the opinion of the Commission, who are appropriately redacted.]
- **UNFOUNDED** – [unfounded allegations, some against employees, in the opinion of the Commission, who are appropriately redacted.]

⁸ [Footnote redacted].

Based upon the evidence, the OEIG makes the following recommendations:

[This section has been redacted because actions of the employee involved did not result in a suspension of three days or more, and, in the opinion of the Commission, are appropriately redacted.]

Eric Knuth: The OEIG recommends that Mr. Knuth be discharged with no right to reinstatement with any state agency for his: (1) personal use of University computers and email, particularly obtaining over 1,600 pornographic images and over 300 animated images of children engaging in sexual activity on his University computer; and (2) abuse of time.

Furthermore, any separation agreement reached with [redacted] and/or Mr. Knuth should state that he/she each individually agrees “never to apply for, nor to accept, employment with the State.”

[This section has been redacted because actions of the employee involved did not result in a suspension of three days or more, and, in the opinion of the Commission, are appropriately redacted.]

The OEIG also strongly recommends that Eastern Illinois University amend Internal Governing Policies 128 and 129 to reflect that University staff members have no expectation of privacy in the contents of University computers or email.

No further investigative action is needed and this case is considered closed.



General Counsel

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RECEIVED

DEC 23 2010

BY: _____

December 15, 2010

Neil Olson
Deputy Director
Office of Executive Inspector General
32 West Randolph Street, Suite 1900
Chicago, IL 60601

Re: Case Number 08-00687

Dear Mr. Olson:

As a follow up to my letter of December 10, 2010, I can report that [redacted] was warned, counseled, and reprimanded on December 14, 2010, as recommended.

Sincerely,

Robert L. Miller
General Counsel

RLM:mkl
ENC



OFFICE OF EXECUTIVE INSPECTOR GENERAL
FOR THE AGENCIES OF THE ILLINOIS GOVERNOR

32 WEST RANDOLPH STREET, SUITE 1900
CHICAGO, ILLINOIS 60601
(312) 814-5600

RICARDO MEZA
EXECUTIVE INSPECTOR GENERAL

OEIGG RESPONSE FORM

Case Number:
08-00687

Return By:
20 Days after Receipt of Report

Please check the box that applies.

- We have implemented all of the OEIGG recommendations:
(Provide details regarding action taken.)

- We will implement all of the OEIGG recommendations but will require additional time.
We will report to OEIGG within 30 days from the original return date:
(Provide details regarding action planned / taken.)

The University initiated discharge proceedings against Eric Knuth [redacted] on Dec. 1, 2010. [Redacted] will be warned and counseled and a written reprimand will be placed in his file the week of Dec. 13, 2010. [3 names redacted] were reminded of the University's timekeeping policies. [Two names redacted] no longer work at the University.

(over)

*** IF YOU WISH TO DEVIATE FROM OEIGG RECOMMENDATIONS YOU MUST OBTAIN PRIOR WRITTEN APPROVAL FROM THE OEIGG.**

We are implementing the OEIGG recommendations however, we request approval to deviate as follows:

(Provide details regarding action planned / taken and proposed alternate(s).)

We do not wish to implement any of the OEIGG recommendations and request approval to deviate as follows:

(Explain why and provide details of alternate plan.)

Signature

Robert L. Miller
Print Name

EIU - General Counsel
Print Agency and Job Title

12-10-10
Date

* We will accept or reject your proposed alternate plan within 30 days of its receipt.



General Counsel

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REC-11000
FEB 04 2011
BY: _____

February 3, 2011

Mr. Neil Olson
Supervising Assistant Inspector General
Office of the Executive Inspector General
607 E. Adams, 14th Floor
Springfield, Illinois 62701

Re: OEIG Case No. 08-00687

Dear Mr. Olson:

University officials continue to address the recommendations in the report referenced above, and I am providing details of those efforts below.

As was reported earlier, the recommendations for several employees have been entirely implemented. Regarding the recommendations for employees [redacted] and Knuth, the university has followed the applicable civil service statutory and administrative processes. The various time periods built in to these proceedings afford the employee(s) and the institution the opportunity to receive and review information prior to the employee's final separation. During this time we received and evaluated information that required a modification of the university's response regarding [redacted] Eric Knuth.

As I mentioned at our meeting last month, [redacted] provided various statements from coworkers and [] former supervisor, generally stating they understood that personal use of computers by employees was permissible. The assertion that [redacted] permitted [redacted] and others to use laptops for personal use is particularly noteworthy. This information was provided by [redacted] after the university took action and was not considered when discharge proceedings were initiated in early December.

After considering this information, and after discussing the matter with outside counsel, we have determined that the university faced significant risks if discharge proceedings continued. Our outside counsel has advised that both employees would likely sue the university for employment discrimination and other reasons, and we have been advised that based on the facts of these cases, asserting a successful defense would be difficult.

The university continues to carefully and thoughtfully consider the risks involved in meting out the appropriate discipline, and measures will be implemented to prevent a recurrence of conduct reported by the OEIG.

Mr. Neil Olson
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February 3, 2011

In addition to the specific disciplinary measures regarding the employees involved in this case, the university has also tightened the rules and policies within the ITS department. ITS employees have been instructed by the Vice President for Business Affairs that:

1. they (exempt employees) are not entitled to compensatory time for hours worked off campus;
2. employees must work on campus 37.5 hours per week unless approved sick leave or vacation leave is used; and
3. personal use of university issued laptops is not permitted.

In addition, an announcement regarding the use of compensatory time for exempt employees was sent to the entire campus last July.

Regarding employees [redacted] and Knuth, the university has implemented the following actions:

- [redacted] and Knuth have received suspensions without pay;
- Knuth will be terminated immediately upon any conviction in his pending criminal case; and
- Both employees have been personally instructed again that they must complete 37.5 hours of work on campus every week unless appropriate vacation or sick leave is utilized.

The recommendation that university policies be revised to state that employees should not expect privacy in their computers or electronic communications has been discussed by administration officials and the university's Board of Trustees, and subsequent action is forthcoming. In addition to any policy revisions, a campus wide communication will be issued regarding this issue. This process will be complete by March 12, 2011, as requested in Mr. Meza's letter of January 13, 2011.

Please contact me if I can be of any assistance or if you need additional information.

Sincerely,

Robert L. Miller
General Counsel

RLM:mkl



General Counsel

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RECEIVED
BY: MAR 4 2011

March 1, 2011

Mr. Neil Olson
Supervising Assistant Inspector General
Office of the Executive Inspector General
607 E. Adams, 14th Floor
Springfield, Illinois 62701

Re: OEIG Case No. 08-00687

Dear Mr. Olson:

As requested, the university is providing additional information regarding measures taken to address the recommendations in the above-reference case. Since the initial investigation began approximately two and a half years ago, much has changed in the Information Technology Services (ITS) department at EIU. [redacted], two high ranking ITS officials, resigned their positions and left the university. Efforts have been made to educate ITS employees about work schedule requirements and personal use of laptop computers. The Vice President for Business Affairs gave direct instructions regarding these issues to ensure compliance with these expectations. And several employees were disciplined as a result of the investigation. Employees Eric Knuth and [redacted] were suspended two days without pay, and several other employees received reprimands.

Regarding the recommendation that the university amend its Internal Governing Policy (IGP) to include a statement on privacy expectations in computing, the following statement was added to IGP 129:

Statement on Privacy

The University will make every effort to respect individual privacy, but the University cannot grant or promise an expectation of privacy to individuals utilizing university technology and information resources. The university reserves the right to access university computer systems and resources for security or maintenance purposes, with the understanding that individual accounts will be accessed only when necessary. Users should also be aware that systems may be breached internally or externally by persons utilizing malicious software or by other means. The university may also be required

Mr. Neil Olson
Page 2
March 1, 2011

to respond to external requests for access to computer systems, including email accounts, pursuant to a valid subpoena, Freedom of Information Act request, or a valid request from a state or federal agency.

Please contact me if I can be of any assistance or if you need additional information.

Sincerely,

Robert L. Miller
General Counsel

RLM:mkl



OFFICE OF EXECUTIVE INSPECTOR GENERAL
FOR THE AGENCIES OF THE ILLINOIS GOVERNOR

PAT QUINN
GOVERNOR

607 E. ADAMS, 14TH FLOOR
SPRINGFIELD, ILLINOIS 62701

RICARDO MEZA
EXECUTIVE INSPECTOR GENERAL

CONFIDENTIAL

March 15, 2011

Robert Miller
General Counsel
Eastern Illinois University
600 Lincoln Avenue, 2102 Blair Hall
Charleston, IL 61920-3099

Re: OEIG Case No. 08-00687

Dear Mr. Miller:

The Office of the Executive Inspector General (OEIG) received your letters dated February 3, 2011 and March 1, 2011. As you know, the OEIG investigation revealed that Eric Knuth and [redacted] used State computers to obtain and view hundreds of inappropriate images. Some of the images were pornographic and in Mr. Knuth's case, images included hundreds of animated photos of children engaging in sexual activity. Based upon this and other activity, the OEIG recommended that Eastern Illinois University (EIU) terminate Mr. Knuth and [redacted]. It is our understanding that EIU initially accepted our recommendation and began termination proceedings but then halted the proceedings and instead imposed a 2-day suspension.

The OEIG does not believe a 2-day suspension adequately addresses the serious nature [redacted] of the misconduct engaged in by Mr. Knuth and [redacted]. We understand Mr. Knuth and [redacted] assert that they were allowed to use University computers for personal use; however, even if true, no employee could reasonably assert that personal use of State equipment includes creating a data warehouse of pornographic images, including animated photos of children engaging in sexual activity. In fact, in a recent decision, a court held that a public employer may discharge an employee for using an employer's computer to access pornography even though the employer does not have a policy specifically banning it. *Brisson v. City of Hewitt*, 789 N.W.2d 694 (Minn.App. 2010).

We also understand and appreciate that EIU is not bound by OEIG recommendations. In any event, the OEIG will be providing a copy of the Founded Report to the Executive Ethics Commission and will recommend that they published a redacted version of the final report pursuant to Section 20-52(a) of the Ethics Act.

Sincerely,

Ricardo Meza
Executive Inspector General