May 27, 2014

via email to FOIA@isbe.net and via USPS

Public Information Requests Liaison / Officer  
Freedom of Information Office  
Illinois State Board of Education  
100 North First Street  
Springfield, Illinois 62777-0001  
ATTN: FOIA Request

Re: ISBE Public Information Request: Software Vendors’ “Compliance Audits” (or “True-Up’s”)

Dear Public Information Requests Liaison / Officer:

Per the Illinois Freedom of Information Act, 5 ILCS 140, please provide (and/or advise how I can obtain) the items noted below. They’re all regarding customer (licensee) “software license compliance” inquiries and audits (sometimes called a “true-up” or “licensing consultation”) for the last five (5) years, as to the following software vendors (i.e., if they have been suppliers to your agency, or please advise if they haven’t): (i) Attachmate, (ii) Actuate (including its Xenos unit), (iii) Novell, (iv) IBM (i.e., International Business Machines) (including any previously-independent software provider acquired by IBM), (v) Oracle, and (vi) EMC (including its acquired VMware unit).

Easing Your Agency’s Effort: I’d be happy to discuss via email or phone any suggestions that you might have regarding making easier and faster your office’s response.

My Priorities: I’ll note that I’m most interested in receiving materials (a) re. Attachmate, and (b) re. items 8-9 and 12-13 below, including for my guest-teaching in Chicago again on this topic at a national annual conference on June 23, where my deadline for submitting my final presentation is June 13.

1. Project Start: initial communication(s) from any such vendor specified above (including on the vendor’s behalf by a designated agent, including an independent CPA or technology services firm) requesting “self-assessment,” audit, “deployments,” usage review, or any other inventorying of use, loading, internal distribution, or potential access, of such vendor’s software (which communication[s] could be in email, letter, meeting presentation, or other format).

2. Project Tool(s), From Vendor: any (i) blank or template form(s); (ii) questionnaire; (iii) description(s) of any software tool(s), application(s) or “script(s)”; and (iv) other materials or communication(s) provided by any such vendor (or on its behalf) to your agency (or your outside services provider, law firm, or other representative) for conducting such audit, “review,” inventoring, or “true-up.”
3. Your Reply/ies: your agency’s response(s) to the vendor request(s) (including any responses or replies on your behalf, including by any technology services vendor, law firm, or other representative).

4. Vendors’ Communication(s): all communication(s) from the vendor (including from any independent CPA or technical services firm or other representative), to plan, enable, and/or execute the audit, “review,” inventorying, or “true-up” (including project plans and emails).

5. Contracts: both copies of, and any communication(s) between (or on behalf of) your agency (or its representative) and any such vendor (or its representative) regarding identifying, the applicable contract(s) and ordering documents between the parties (including any [a] Purchase Order(s), requisition(s) or the like, [b] Enterprise or Volume Purchase Agreement(s) [or any other comprehensive, multi-year, multi-product, or multi-entity over-all contract, by any name or title], [c] later Amendment(s), Addenda(s), Product(s) Schedule(s), and/or other changes and/or supplements to any such original or primary contract(s), [d] End User License Agreements [sometimes called a “EULA”] [possibly including a “click-wrap” license or contract, often incorporated into actual delivered units of a software product and/or presented on the website of a software vendor or its reseller], and [e] dealer, distributor, “value-added reseller” [“VAR”], consultant, or other sales-channel or indirect license or contract).

6. Preliminary Technical / Quantitative Results, Vendor’s: Vendor’s summary and detailed results of the audit(s), including any report(s) and data from any vendor representative.

7. Preliminary Technical / Quantitative Results, Your Agency’s: summary and detailed results of any self-audit(s), including any report(s) and data from any representative of your agency.

8. Interpretation & Impact (Vendor’s View): any vendor’s summary, interpretation, and/or re-delivery of the results of any such audit, inventorying, review, or “true-up,” including any calculation of moneys asserted to be owed, invoice, settlement proposal, and/or purchasing suggestion(s) or offer(s).

9. Response (Agency’s View): any communication(s) (by or on behalf of) your agency in response to any such interpretation, calculation(s), invoicing(s), or other communication(s) from such a vendor (e.g., per #8 above), including regarding any amount(s) and/or categories of moneys allegedly owed (or not) as a result of or related to the audit/review/inventorying/true-up.

This would include any (i) differing interpretation(s) of the contract(s) and/or audit/review/etc. data and (ii) any financial and/or other counter-proposal(s).

10. Contract Renegotiation or Supplementation?: any communication(s) between (or on behalf of your agency) and any such vendor regarding helpful, required, suggested, or other future changes or additions in contracts, contract terms, ordering processes, record-keeping media, and/or communications media (including moving to “on-Web” purchasing via the vendor’s website) as a result of or related to (a) the audit/review/inventorying/true-up, (b) changes in the vendor’s product offerings (including from “on-premises” or hosted” or newer “subscription” or
“service as a service” product offerings), or (c) change(s) in your agency’s information technology infrastructure strategy, plans, leadership, or otherwise.

11. Settlement, Draft: any draft settlement agreement(s) between (or on behalf of) the parties to conclude the audit/review/inventorying/true-up.

12. Settlement, Actual: any final, signed settlement agreement(s) between the parties.

13. $$s Expenditure(s): copy of any payment authorization(s) and check(s) concluding the project (presumably from agency/customer to vendor, though occasionally they’re vice versa, in instances of discovered prior over-payment).

14. Agency’s Project Expenses, Legal Costs: re. any law firm(s) hired by your agency to investigate, defend, analyze or otherwise assist re. this vendor and/or this audit/review/inventorying/true-up, (a) summary of total expenditure and (b) its invoices.

15. Agency’s Project Expenses, Self-Auditing Software Costs: re. any “discovery,” auditing, “Software Asset Management,” “systems management,” or similar software procured or licensed to enable your agency to perform either project-specific or ongoing determination of what vendor software has / had been deployed or used, (a) summary of total expenditure(s) and (b) the associated license(s) (procurement agreement[s]).

FYI, just in case it helps, vendors who make this type of software include: Altiris, Aspera, Asset Manager (product of CDW Software), Attest, BDNA, Eracent, eSmart, eTelligent Solutions, Express Metrix, Flexnet (product of Flexera Software), iQuate, K2 KeyAuditor & KeyServer (product of Sassafras Software), License Broker (product of System Integrators), License Dashboard, Nascio, 1E, Open iT, CC Survey (product of Scalable Software), Snow Software, xAssets, Zenworks (Novell product), and others. (And there are also such products made the software vendors named at the beginning of this request).

16. Agency’s Project Expenses, Outside Technical Service Firm(s) Costs: re. any technology consulting, “Software Asset Management,” “software negotiation,” software pricing, software strategy, or other third party service firm(s) hired by your agency re. this project, (a) summary of total expenditure(s) and (b) the associated services contract[s].

Iterative Delivery?: If it’s easier for responsive materials to be sent in phases, that’s fine. I’d welcome receiving a sub-set of materials as soon as possible. I realize that some materials may be easier and faster to identify and collect than others.

Delivery Method: I hope responsive materials might be provided electronically (rather than paper) and via email (rather than USPS) if possible.

Fee Waiver Request: Please waive any applicable charge, per the Illinois statute, since my research supports the public interest (i.e., in understanding and publicizing intermittent sub-optimal procurement of software products and/or related services by government agencies using public tax dollars, and occasional disputes and even litigations between software vendors and
their customers – a growing, high-dollar, under-researched, under-publicized national trend, which so far is mostly revealed only in very hard-to-find court pleadings) and my upcoming unpaid guest-teaching at the Chicago conference.

Thanks in advance and I look forward to hearing soon from you or your designee.

Sincerely,

Henry W. Jones, III