

Washington State Auditor's Office
Whistleblower Investigation Report

**Department of Social and Health
Services**

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WASHINGTON
TROY KELLEY
STATE AUDITOR



**Washington State Auditor
Troy Kelley**

January 27, 2014

Kevin Quigley, Secretary
Department of Social and Health Services

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. WB 13-030 at the Department of Social and Health Services.

The State Auditor's Office received an assertion of improper governmental activity at the Agency. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the result of our investigation.

Questions about this report should be directed to Whistleblower Manager Troy Niemeyer at (360) 725-5352.

Sincerely,

TROY KELLEY
STATE AUDITOR

cc: Andrew Colvin, Public Disclosure/Ethics Administrator
Governor Jay Inslee
Melanie de Leon, Executive Director, Executive Ethics Board

Whistleblower Investigation Report

State of Washington Department of Social and Health Services

ABOUT THE INVESTIGATION

Our Office received a whistleblower complaint asserting three Department of Social and Health Services employees, one of whom supervised the other two employees, were using their state computers to purchase and sell items on an online auction site. It was asserted the supervisor not only used his computer for personal use, but was aware the employees he supervised were also using their computers for personal use.

ASSERTIONS

1. Subject One, a Department of Social and Health Services employee, used state resources for personal gain.
2. Subject Two, a Department of Social and Health Services employee, used state resources for personal gain.
3. Subject Three, a Department of Social and Health Services employee, used state resources for personal gain.

RESULTS

Our Office received the hard drives for each employee's computer and our forensics team created reports based on the data retrieved, which showed each employee's Internet use.

Subject One

We found no reasonable cause to believe an improper governmental action occurred.

Our review of Subject One's Internet use showed the subject rarely logged onto his computer and did not access the Internet for personal purposes.

Subject Two

We found reasonable cause to believe an improper governmental action occurred.

Subject Two supervises the other subjects of this investigation. When creating the forensic report we found Subject Two's hard drive had been overwritten so the data collected was sporadic relative to dates. Because of this we limited our review to the most recent, consecutive data captured, three days in February 2013; 12 days in March 2013 and all of April 2013.

These are the results of our review:

February – 50 minutes browsing for a microwave oven and a boat.

March – 53 minutes browsing sports news and browsing for a boat.

April – 72 minutes over 11 days browsing for a boat. Overall use in April occurred on 17 of 20 work-days (captured in the report) with a high of 24 minutes, a low of 1 minute and an average of 10.24 minutes per day.

During an interview, Subject Two confirmed that he used his state computer for personal use not limited to the dates we were able to capture. He said he browsed the Internet during down times but had not purchased or sold anything using his state computer.

Regarding the assertion that he was aware the employees he supervised were using their state computers for personal use, he said he was aware of Subject Three's use but since it did not seem to impact his work, he did not think Subject Three's use was a problem.

State ethics laws allow for de minimis use of state resources. De minimis is defined as being brief *and* infrequent. Although some of Subject Two's personal use of the computer could be viewed as brief, it was not infrequent.

Subject Three

We found reasonable cause to believe an improper governmental action occurred.

We reviewed Subject Three's Internet activity from May 9, 2012 through April 26, 2013. We found he accessed the Internet for personal purposes on an almost daily basis accessing shopping, online auction and online classified advertisement sites. Subject Three spent many hours browsing for boats, motorcycles, chainsaws, aquariums, pet supplies, guns and other sporting equipment. He also accessed blogs and forums related to the items he was browsing. A Department administrative policy clearly prohibits accessing blogs and forums unrelated to the employee's position.

Subject Three's use of his computer for personal purposes was so great we had to limit the scope of our investigation. The following are examples of time spent at this non-work-related activity and are not all-inclusive of time spent at these pursuits:

December 14, 2012

7:50 a.m. – 9:45 a.m.	45 minutes non-work-related activity
1:06 p.m. – 2:29 p.m.	65 minutes non-work-related activity

- Browsing for a chainsaw - 80 minutes on December 14, 2012 and 70 minutes on December 20, 2012.
- Browsing for sporting goods – 132 minutes over 19 days between August 24, 2012 and December 23, 2013.
- Browsing for motorcycles/ATVs – 77 minutes over 16 days between August 14, 2012 and January 22, 2013.
- Browsing for an aquarium/fish – 224 minutes over 12 days between December 27, 2012 and January 22, 2013.

Subject Three continued to browse for the above items and additional items, through our final review date of April 26, 2013.

- Subject Three accessed 4,370 web pages for an online classified advertisement site, including accessing an advertisement he posted.

- Subject Three accessed 824 web pages for an online auction site, including checkout and payment pages.

Time spent browsing the Internet:

January 2013 – 19 working days, all with personal-use activity.

- High of 102 minutes
- Low of 1 minute
- Total for month 554 minutes or 9.23 hours
- Daily average 28.63 minutes

February 2013 – 19 working days, all with personal-use activity.

- High of 119 minutes
- Low of 8 minutes
- Total for month 1,122 minutes or 18.7 hours
- Daily average 59.05 minutes

March 2013 – 19 working days; however, the subject was absent two days, the remaining 17 all with personal-use activity.

- High of 113 minutes
- Low of 25 minutes
- Total for month 1,257 minutes or 20.95 hours
- Daily average 73.94 minutes

April 2013 – 22 working days; however, our data did not include April 29 and 30. The subject was absent one day leaving 19 working days to review; all 19 with personal-use activity.

- High of 156 minutes
- Low of 29 minutes
- Total for month 1,583 minutes or 26.38 hours
- Daily average 83.32

During an interview, Subject Three confirmed the activity was unrelated to his Department position. He stated his supervisor was aware of his use and had never addressed it with him as being an issue. Subject Three said he browsed the Internet during his down time but had never purchased or sold anything using his work computer. Regarding his accessing his online auction account, he said that he was checking to see how much one of his items was selling for.

AGENCY'S PLAN OF RESOLUTION

The Department will review the information provided by your office. In accordance with applicable collective bargaining agreements and agency policy, the Department will afford the employees an opportunity to respond to the Auditor's report. At that time the Department will take any appropriate disciplinary action, which may include termination from employment. The Department will notify the State Auditor of the outcome of its review and resulting actions.

STATE AUDITOR'S OFFICE REMARKS

We thank Agency officials and personnel for their assistance and cooperation during the investigation.

Whistleblower Investigation Criteria

State of Washington Department of Social and Health Services

We came to our determination in this investigation by evaluating the facts against the criteria below:

Assertions 1 through 3:

RCW 42.52.160 Use of persons, money, or property for private gain, states in part:

(1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

WAC 292-110-010 Use of state resources, states in part:

(2) The following are permitted uses:

(a) Use of state resources that is reasonably related to the conduct of official state duties, or which is otherwise allowed by statute.

(b) An agency head or designee may authorize a use of state resources that is related to an official state purpose, but not directly related to an individual employee's official duty.

(c) An agency may authorize a specific use that promotes organizational effectiveness or enhances the job-related skills of a state officer or state employee.

(d) A state officer or employee may make an occasional but limited personal use of state resources only if each of the following conditions are met:

(i) There is little or no cost to the state;

(ii) Any use is brief;

(iii) Any use occurs infrequently;

(iv) The use does not interfere with the performance of any officer's or employee's official duties; and

(v) The use does not compromise the security or integrity of state property, information, or software.

(5) Prohibited uses.

(a) Any use for the purpose of conducting an outside business, private employment, or other activities conducted for private financial gain;

(e) Any use related to conduct that is prohibited by a federal or state law or rule, or a state agency policy;

DSHS Administrative Policy No. 15.15, states in part:

Use of Electronic Messaging Systems and the Internet

Sunset Review Date: May 15, 2012

B. Employee Use of Electronic Messaging Systems and the Internet

3. Prohibited Uses – Employees are prohibited from using state-provided electronic messaging systems and the Internet in any of the following ways:

- f. In addition, employees may not use state-provided Internet access, to:
 - 3) Participate in non-work related Instant Messaging, chat groups, listservs, blogs, or newsgroups;

Contacts

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