



Office of the Washington State Auditor
Pat McCarthy

Whistleblower Investigation Report
Department of Social and Health
Services

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January 18, 2018

Cheryl Strange, Secretary
Department of Social and Health Services

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. 17-027 at the Department of Social and Health Services.

The State Auditor's Office received an assertion of improper governmental activity at the Department. 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.

If you are a member of the media and have questions about this report, please contact Assistant Director for Communications Kathleen Cooper at (360) 902-0470. Otherwise, please contact Whistleblower Manager Jim Brownell at (360) 725-5352.

Sincerely,

Pat McCarthy
State Auditor
Olympia, WA

cc: Governor Jay Inslee
Andrew Colvin, Discovery/Ethics Administrator
Kate Reynolds, Executive Director, Executive Ethics Board
Jennifer Wirawan, Investigator

WHISTLEBLOWER INVESTIGATION REPORT

Assertions and Results

Our Office received a whistleblower complaint asserting a Department of Social and Health Services (Department) employee (subject) failed to complete child abuse intakes, placing the health and safety of children at risk. Additionally, the whistleblower asserted the subject used state resources for non-work-related purposes.

We found reasonable cause to believe improper governmental actions occurred.

About the Investigation

Assertion One

The subject works in the Department's Children's Administration Intake Unit (Unit). Intake workers receive and document complaints regarding alleged child abuse or neglect. Complaints of child abuse or neglect are submitted to the Unit through an intake hotline, fax or email. When an intake supervisor receives an emailed or faxed complaint, they forward the email to an intake worker for documentation in Famlink, Children's Administration's information management system.

As part of their responsibilities, intake workers must document complaints received from mandatory reporters, such as law enforcement officers, who often email police reports involving child victims. This ensures Child Protective Services (CPS) investigators have all relevant information for their investigation.

To ascertain whether the subject documented complaints of child abuse and neglect, we reviewed the subject's emails. We identified 33 complaints sent to the subject by his supervisor between April 15, 2016, and September 13, 2016. We searched Famlink to determine if the subject documented each report he was sent.

We identified eight emails with attached complaints involving 13 child victims that the subject failed to document in Famlink. The reported incidents ranged from allegations of child neglect to sexual abuse, and involved children ranging in age from 3 to 17. In some of the cases, CPS investigators did not have all available facts because the subject failed to enter required information. In other cases, CPS investigators were unaware of the alleged abuse because the subject failed to enter this information into Famlink.

During an interview, the subject said he did not enter the complaints because he never saw the emails. When asked if he is responsible for checking his emails, he said, "True, it's my job, but where is the supervisor's responsibility to make sure I get the email?" He said he did not receive training on Microsoft Outlook, and the emails "may have shown up" in his inbox, but he did not

see them. He added, “It was probably negligent of me not to look in my emails, I get busy and forget — I don't know, I get tired of reading them.”

Assertion Two

We found, from April 15, 2016, through April 15, 2017, the subject sent and received more than 300 personal emails using his state Outlook email account. The emails included communications regarding utility payments, insurance claims, diet information, and email strings with multiple family members.

During an interview, the subject acknowledged his personal use of his state email address. He said, “I’m at my desk for eight and a half hours a day, so it’s convenient.” He added that he did not have internet at home for a couple of years, but has recently switched back to using a personal email account.

Additionally, the subject sent an email to his wife containing confidential information. The email with the subject line “abuse” included a picture of an emaciated and bruised toddler and, “This is a 4 year old I did an intake on Tuesday!” The subject chose not to respond to our questions regarding this email.

Conclusion

We found the subject:

- Failed to enter complaints of child abuse or neglect placing the health and safety of children at risk
- Disclosed confidential information to a person not authorized to receive it
- Used state resources for non-work-related purposes beyond de minimis use or beyond the de minimis standard

Therefore, we found reasonable cause to believe improper governmental actions occurred.

Department’s Plan of Resolution

Thank you for the opportunity to review and respond to the State Auditor’s Office (SAO) draft report on Whistleblower Case No. 17-027. The Department of Social and Health Services takes the assertions seriously and appreciates the assistance of the SAO in developing important facts in its investigation.

In accordance with applicable collective bargaining agreements and agency policy, the Department will afford the employee an opportunity to respond to the Auditor’s report. A referral was made to Children’s Administration’s Central Investigations Unit for investigation on November 28, 2017, to review and investigate the findings identified in the report. Upon

completion of the investigation, the findings will be reviewed and appropriate action determined, which may include formal disciplinary action up to and including dismissal.

State Auditor's Office Concluding Remarks

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

WHISTLEBLOWER INVESTIGATION CRITERIA

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

Assertion 1:

RCW 42.40.020(6)(a)(iii) and (8) – Definitions

(6)(a) "Improper governmental action" means any action by an employee undertaken in the performance of the employee's official duties:

(iii) Which is of substantial and specific danger to the public health or safety;

(8) "Substantial and specific danger" means a risk of serious injury, illness, peril, or loss, to which the exposure of the public is a gross deviation from the standard of care or competence which a reasonable person would observe in the same situation.

RCW 26.44.030(4) and (10) – Reports – Duty and authority to make – Duty of receiving agency

(4) The department, upon receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to alleged sexual abuse, shall report such incident to the proper law enforcement agency, including military law enforcement, if appropriate. In emergency cases, where the child's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report must also be made to the proper law enforcement agency within five days thereafter.

(10) Upon receiving a report of alleged abuse or neglect, the department shall make reasonable efforts to learn the name, address, and telephone number of each person making a report of abuse or neglect under this section. The department shall provide assurances of appropriate confidentiality of the identification of persons reporting under this section. [...]

WAC 388-15-009 – What is child abuse or neglect?

Child abuse or neglect means the injury, sexual abuse, or sexual exploitation of a child by any person under circumstances which indicate that the child's health, welfare, or safety is harmed, or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

(1) Physical abuse means the nonaccidental infliction of physical injury or physical mistreatment on a child. Physical abuse includes, but is not limited to, such actions as:

- (a) Throwing, kicking, burning, or cutting a child;
- (b) Striking a child with a closed fist;
- (c) Shaking a child under age three;
- (d) Interfering with a child's breathing;
- (e) Threatening a child with a deadly weapon;
- (f) Doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks or which is injurious to the child's health, welfare or safety.

(2) Physical discipline of a child, including the reasonable use of corporal punishment, is not considered abuse when it is reasonable and moderate and is inflicted by a parent or guardian for the purposes of restraining or correcting the child. The age, size, and condition of the child, and the location of any inflicted injury shall be considered in determining whether the bodily harm is reasonable or moderate. Other factors may include the developmental level of the child and the nature of the child's misconduct. A parent's belief that it is necessary to punish a child does not justify or permit the use of excessive, immoderate or unreasonable force against the child.

(3) Sexual abuse means committing or allowing to be committed any sexual offense against a child as defined in the criminal code. The intentional touching, either directly or through the clothing, of the sexual or other intimate parts of a child or allowing, permitting, compelling, encouraging, aiding, or otherwise causing a child to engage in touching the sexual or other intimate parts of another for the purpose of gratifying

the sexual desire of the person touching the child, the child, or a third party. A parent or guardian of a child, a person authorized by the parent or guardian to provide childcare for the child, or a person providing medically recognized services for the child, may touch a child in the sexual or other intimate parts for the purposes of providing hygiene, child care, and medical treatment or diagnosis.

(4) Sexual exploitation includes, but is not limited to, such actions as allowing, permitting, compelling, encouraging, aiding, or otherwise causing a child to engage in:

(a) Prostitution;

(b) Sexually explicit, obscene or pornographic activity to be photographed, filmed, or electronically reproduced or transmitted; or

(c) Sexually explicit, obscene or pornographic activity as part of a live performance, or for the benefit or sexual gratification of another person.

(5) Negligent treatment or maltreatment means an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, on the part of a child's parent, legal custodian, guardian, or caregiver that shows a serious disregard of the consequences to the child of such magnitude that it creates a clear and present danger to the child's health, welfare, or safety. A child does not have to suffer actual damage or physical or emotional harm to be in circumstances which create a clear and present danger to the child's health, welfare, or safety. Negligent treatment or maltreatment includes, but is not limited, to:

(a) Failure to provide adequate food, shelter, clothing, supervision, or health care necessary for a child's health, welfare, or safety. Poverty and/or homelessness do not constitute negligent treatment or maltreatment in and of themselves;

(b) Actions, failures to act, or omissions that result in injury to or which create a substantial risk of injury to the physical, emotional, and/or cognitive development of a child; or

(c) The cumulative effects of a pattern of conduct, behavior or inaction by a parent or guardian in providing for the physical, emotional and developmental needs of a child's, or the effects of chronic failure on the part of a parent or guardian to perform basic parental functions,

obligations, and duties, when the result is to cause injury or create a substantial risk of injury to the physical, emotional, and/or cognitive development of a child.

WAC 388-15-017 – What is the responsibility of CPS regarding reports of abuse or neglect

- (1) CPS must record a report from any source alleging child abuse or neglect.
- (2) CPS must determine whether alleged incidents or conditions meet the definitions of child abuse or neglect in this chapter or in chapter 26.44 RCW.
- (3) CPS must assess or investigate all reports of alleged child abuse or neglect that meet the definitions of child abuse or neglect contained in this chapter or in chapter 26.44 RCW.
- (4) CPS must investigate anonymous reports only as provided in RCW 26.44.030(15).
- (5) CPS must maintain a record of reports received that are not investigated because they do not meet the definitions of child abuse or neglect as defined in RCW or this chapter.
- (6) CPS must report to law enforcement per RCW 26.44.030(4) and 74.13.031.

Assertion 2:

RCW 42.52.160(1) – Use of persons, money, or property for private gain.

- (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(1) and (3) – Use of state resources.

- (1) Statement of principles. All state employees and officers are responsible for the proper use of state resources, including funds, facilities, tools, property, and their time. This section does not restrict the use of state resources as described in subsections (2) and (3) of this section.
- (3) Permitted personal use of state resources. This subsection applies to any use of state resources not included in subsection (2) of this section.
 - (a) A state officer or employee's use of state resources is de minimis 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 state officer's or employee's official duties;
- (v) The use does not compromise the security or integrity of state property, information systems, or software;
- (vi) The use is not for the purpose of conducting an outside business, in furtherance of private employment, or to realize a private financial gain; and
- (vii) The use is not for supporting, promoting the interests of, or soliciting for an outside organization or group.