



Office of the Washington State Auditor
Pat McCarthy

Whistleblower Investigation Report

Department of Corrections

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February 1, 2018

Stephen Sinclair, Secretary
Department of Corrections

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. 17-028 at the Department of Corrections.

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
Liana Dupont-Smith, Audit Director/Ethics Advisor
Kate Reynolds, Executive Director, Executive Ethics Board
Jennifer Wirawan, Investigator

WHISTLEBLOWER INVESTIGATION REPORT

Assertion and Results

Our Office received a whistleblower complaint asserting a Department of Corrections (Department) employee (subject) is conducting his outside business during state time and without using leave.

We found reasonable cause to believe an improper governmental action occurred because the subject failed to submit leave for all his absences.

About the Investigation

We reviewed the subject's swipe-card entry logs, leave slips, calendar and emails from May 1, 2016, through June 30, 2017. We attempted to obtain a copy of the subject's hard drive; however, the contents of the drive were deleted shortly before our request. The Department said the contents were deleted as a result of a scheduled process.

In an interview with our Office, the subject said he works a "9/80" schedule. In a two-week period, the subject works eight 9-hour days, one 8-hour day, and then receives the last day off. The subject said that with his schedule, he has every other Friday off. We used this reported schedule as the basis for our conclusions.

The subject works on a project team that primarily meets at Department headquarters. He has two supervisors: his direct supervisor is the Department's assistant secretary, and his day-to-day supervisor is the project manager. Although the assistant secretary approves the subject's leave requests, he said he does not know the subject's whereabouts on any given day and does not know his schedule. The project manager told us she does not keep track of the subject's whereabouts, and does not know his schedule.

In our review of the subject's emails, we identified 167.5 hours when the subject reported via email he would be out of the office, but did not submit leave. On one occasion, in May and June 2017, the subject was in a different state for two weeks and did not submit leave.

The subject was unable to explain his failure to submit leave for the absences. For most of them, he said he believed he made it up by working on a day off. He initially provided our Office with dates he said he worked to make up for the time missed, but could not provide sufficient documentation supporting this. In a second meeting, he provided our Office with a different list of dates he said he worked in order to make up for the lost time, but again could not provide documentation supporting his claims.

For example, on September 19, 2017, the subject sent an email stating he needed to stay home with a family member. In our first meeting with the subject, he said he worked on September 16, 2017, and used that time to make up for his absence on the 19th. In the second meeting, he said

he worked on September 30, 2016, to make up for the absence. Again, the subject did not provide sufficient evidence that he worked on the 30th or the 16th, or if he did work, the time was specifically to make up for the time missed on the 19th.

The subject said he sometimes communicated that he was switching days off with supervisors, but he always communicated it verbally. The project manager said the subject has never communicated this information to her. The assistant secretary said the subject has occasionally communicated this information, but it is usually through email.

Regarding the two weeks in May and June 2017, when the subject did not submit 80 hours of leave, he said this was an oversight. He said he had a family emergency that required his absence from work. He notified his supervisor that he was going to be out of the office for two weeks. He said when he returned he was dealing with an overwhelming amount of stress and forgot to submit leave for his absence.

We reviewed the subject's swipe-card entry data, and found his first swipe of the day was usually between 9 AM and 10 AM. The subject said he does not know why his first swipe is usually between 9 AM and 10 AM, other than this may be when he goes to get coffee. The subject said he gets to work about 8 AM or "shortly before" each day and leaves at 4:30 PM. This is not a sufficient amount of hours to fulfill his nine-hour shift. When asked about the discrepancy, he said, "well, there is the commute;" however, the subject is not paid for his commute.

We found no evidence to support the absences were related to the subject's outside business.

Conclusion

A state ethics rule (WAC 292-110-010(3)(a)) requires all state employees to be responsible for the proper use of state resources, including their time. The subject did not submit leave for 80 hours he was out of state, until this investigation questioned these absences.

We also question an additional 87.5 hours for which the subject did not submit leave and was unable to provide documentation supporting his assertion that he made up the time.

Therefore, we found reasonable cause to believe an improper governmental action occurred regarding the 80 hours. Based on the lack of supporting documentation, we recommend the Department follow-up with the subject regarding the questionable hours.

Department's Plan of Resolution

The Department considers any ethics violations to be serious. The appointing authority has reviewed the draft report and is prepared to follow up and determine appropriate action to take.

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:

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.