



**Office of the Washington State Auditor**  
**Pat McCarthy**

**Whistleblower Investigation Report**  
**Department of Transportation**

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June 28, 2018

Roger Millar, Secretary  
Department of Transportation

**Report on Whistleblower Investigation**

Attached is the official report on Whistleblower Case No. 18-011 at the Department of Transportation.

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  
Steve McKerney, Special Investigations Manager  
Kate Reynolds, Executive Director, Executive Ethics Board  
Cristopher de la Peña, Investigator

# WHISTLEBLOWER INVESTIGATION REPORT

## Assertion and result

Our Office received a whistleblower complaint asserting a Department of Transportation, Ferries Division (Department) employee (subject) improperly collected per diem for meals when he stayed on his privately owned boat instead of in state-provided housing.

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

## Background

The Department provides two Inter-Island ferry routes serving the San Juan Islands. Ferry engineers belong to the District No. 1-PCD, Marine Engineers' Beneficial Association (MEBA) union. In accordance with the collective bargaining agreement between MEBA and the Department, employees assigned to the Inter-Island route who stay in state-provided housing are eligible to claim meal per diem.

## About the Investigation

The subject of this investigation is permanently assigned to an Inter-Island ferry route and moors his personal boat at a marina near the ferry terminal.

Our Office reviewed the subject's time sheets, per diem pay vouchers and emails from October 1, 2016, to September 30, 2017, and interviewed witnesses.

The subject works 12-hour shifts, working seven days followed by seven days off. The Department leases apartments in Friday Harbor to provide housing for employees assigned to the ferry route. According to the bargaining agreement, "employees staying in State provided facilities in Friday Harbor will be entitled to daily per diem in accordance with State per diem rates." According to the complaint our Office received, the subject claimed daily per diem, but did not stay in the state-provided housing.

The subject's timesheets and per diem vouchers, show he requested and received meal expenses for each day he worked the Inter-Island ferry route.

The subject initially said that he would "sometimes" stay in the state-provided housing, then later said he "always" stayed in the state-provided housing. During a subsequent interview, the subject said he moored his boat in Friday Harbor and would occasionally go there to relax and sometimes sleep. He said that when he slept on his boat he would still use the state-provided housing to shower and eat because his boat lacked those amenities. The subject considered showering and using the kitchen at the state-provided housing as "staying" there.

Although the subject said his boat lacked a kitchen and shower, research showed that this type of boat is equipped with a small kitchen and shower as standard features. A witness confirmed that the subject's boat has both amenities.

The Department considers the state-provided housing as the primary lodging for employees who choose not to return to their own home. Lodging is defined as a temporary residence and sleeping quarters. We requested an opinion from the Department on whether using the shower and kitchen at the state provided housing while sleeping elsewhere constitutes "staying in" the housing; the response was that it does not.

The subject claimed meals for each day he worked the Inter-Island ferry route even though he said he did not always stay overnight in the state-provided housing. The collective bargaining agreement stipulates that employees are eligible to claim meals at the daily per diem rate if they stay in the state-provided housing. Therefore, we found reasonable cause to believe an improper government action occurred. Because the subject did not track when he stayed on his boat, we were unable to determine which days he should not have received per diem.

### **Department's Plan of Resolution**

As noted in your report, under the Collective Bargaining Agreement (CBA), employees working on the Inter-Island Ferry route are entitled to receive a specified number of meals at the state per diem rate when they stay in the state-provided housing. The Department's corrective action will be to issue a formal communication reminding employees of CBA per diem eligibility requirements and review existing internal controls and make changes where appropriate.

The Department will further investigate the allegations against the subject in accordance with the established agency code of conduct and progressive discipline policies.

It is important to us that we appropriately and consistently adhere to all state laws, ethical standards and CBA requirements when an employee receives per diem for meals. We take our responsibility to the public seriously and endeavor to continually improve and maintain the public's trust.

### **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**

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)**

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.

### **RCW 43.88.160**

Fiscal management—Powers and duties of officers and agencies, states in part:

This section sets forth the major fiscal duties and responsibilities of officers and agencies of the executive branch. The regulations issued by the governor pursuant to this chapter shall provide for a comprehensive, orderly basis for fiscal management and control, including efficient accounting and reporting therefor, for the executive branch of the state government and may include, in addition, such requirements as will generally promote more efficient public management in the state.

(1) Governor; director of management, shall devise and supervise a modern and complete accounting system for each agency to the end that all revenues, expenditures, receipts, disbursements, resources, and obligations of the state shall be properly and systematically accounted for. The accounting system shall include the development of accurate, timely records and reports of all financial affairs of the state. The system shall also provide for central accounts in the office of financial management at the level of detail deemed necessary by the director to perform central financial management. The director of financial management shall adopt and periodically update an accounting procedures manual.

## **SAAM 10.30.70**

10.30.70 October 1, 2015 Using a travel trailer, camper, or vessel

10.30.70.a When used for the employee's convenience, lodging reimbursement is limited to actual space rental costs (as evidenced by a receipt) not to exceed the daily maximum non-high cost location lodging rate displayed in Subsection 10.90.20 (PDF file).

The employee is not to be reimbursed for the rental or lease cost of the travel trailer, camper, or vessel.

10.30.70.b The agency head or authorized designee, with the traveler's concurrence, may authorize the use of a privately-owned travel trailer or camper when all of the following conditions exist:

- Suitable commercial lodging is not available;
- State lodging is not provided; and
- There is a benefit to the state for the traveler to remain at the temporary work station.

In this situation, the traveler is to be reimbursed at the hourly, non-high cost per diem rate displayed in 10.90.20 (PDF file).

## **MEBA-L 12 (d)**

Regular employees permanently assigned to the San Juan Islands - Anacortes - Sidney B.C. routes or the Port Townsend - Coupeville route will be paid the mileage and travel time indicated in Schedule A for one (1) round trip per week when working, from the terminal nearest the employee's residence. In addition, regular employees permanently assigned to the Inter-Island vessel route will be paid one (1) weekly round trip when working from Anacortes to Friday Harbor. This allowance will be three and one-half (3½) hours roundtrip per week. Payment will be for travel actually performed; employees staying in State provided facilities in Friday Harbor will be entitled to daily per diem in accordance with State per diem rates, and provided with adequate shore side accommodations. Employees that are breaking-in and or performing vessel familiarization may be provided shore side accommodations if preapproved by the Employer.

(1) All employees working the inter-island route that stay in state provided housing will be eligible for up to six (6)-Breakfasts five (5)-Lunches, six (6)-Dinners at the state per diem rate.