



Washington State Auditor's Office

Troy Kelley

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Whistleblower Investigation Report

University of Washington

For the period July 1, 2013 through June 30, 2014

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Washington State Auditor

Troy Kelley

November 13, 2014

Michael K. Young, President
University of Washington

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. WB 14-009 at the University of Washington.

The State Auditor's Office received an assertion of improper governmental activity at the University. 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 Jim Brownell at (360) 725-5352.

Sincerely,

TROY KELLEY

STATE AUDITOR

cc: Richard Cordova, Executive Director of Audits

Governor Jay Inslee

Kate Reynolds, Executive Director, Executive Ethics Board

WHISTLEBLOWER INVESTIGATION REPORT

Results in brief

Our Office received a whistleblower complaint asserting two employees at the University of Washington Medical Center (UWMC) engaged in improper governmental action.

We investigated four assertions and found:

- One assertion for which there was reasonable cause to believe improper governmental actions occurred.
- Two assertions for which we were unable to determine if an improper governmental action occurred.
- One assertion for which there was no reasonable cause to believe an improper governmental action occurred.

About the investigation

Assertion 1: An anesthesia technician (subject 1) used state resources for his personal business.

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

We reviewed hard drive data from three computers located within the area subject 1 worked. We found sites related to his businesses on one of the computers, which is a shared computer. According to the subject, witnesses and management, an employee logs onto the computer in the morning and the computer remains running under that login for the entire day.

Because the computers were shared we limited our review to dates when a user with administrative rights accessed subject 1's business websites. We reviewed the Internet use for calendar year 2013 and found:

- A web-building site was accessed on three days for a total of 68 minutes.
- Subject 1's business magazine site was accessed on three days for a total of 23 minutes.
- Subject 1's business site was accessed on one day for a total of 20 minutes.

Photo and blog sites were accessed on two days with postings and edits made to one of the subject's personal business sites for a total of 24 minutes.

The subject said he and his former business partner, also a UWMC employee, had administrative rights to his websites. He said his partner was the one who accessed the websites. The subject provided us with his own and his former partner's shift schedules, stating a review of the Internet

use would show the business websites were accessed during the partner's shift. We found the sites were accessed on days the subject worked.

We were unable to determine if the subject was the employee who accessed the photo website, as additional evidence revealed this site was accessed frequently by another UWMC employee. We attempted to contact subject 1 to discuss this site, but he did not return our telephone call. We observed that posting and editing on the site was for the subject's business.

We reviewed subject 1's UWMC email folders and found emails related to his businesses:

- 37 emails from 2013
- 66 emails from 2012
- 65 emails from 2011
- 24 emails from 2010

The subject used the email system for other personal use, such as sending and receiving personal photos and videos and sending and receiving divorce papers and loan documents. We found 93 emails related to obtaining a personal loan.

Witnesses said the subject spent a great deal of time working on his business, most of which was done using a personal laptop or his phone. Witnesses said they knew what he was working on because it was all he talked about.

State ethics laws do not allow for any use of state resources for a personal business.

Assertion 2: An anesthesia manager (subject 2) was aware subject 1 used state resources for his personal business and allowed it to occur.

We were unable to determine whether the manager was aware subject 1 was using state resources for his personal business.

Subject 2 said she was not aware subject 1 was using state resources to work on his personal business. She said other employees were using the computers for personal purposes to the extent that she had to completely stop the use. She said a couple of the serious abusers then brought in their own devices and continued spending time on personal endeavors, so she had to tell them not to bring the devices to work. When asked how she could be aware of the other employees' use but not of subject 1's use, considering the amount of personal emails alone, she said he must have been using the operating room so she would not have seen him.

Subject 1 said subject 2 was aware staff were using the state computers for personal use, but probably did not know what they were using it for. However, they all generally knew what topics the others were interested in. He gave the example of another employee who was interested in baseball, so he knew this employee was usually watching baseball when he was on the computer.

He said the computers were being used for personal use but when it got in the way of staff doing their jobs subject 2 put a stop to the use.

One witness said subject 2 knew subject 1 was working on his outside business, as he did so about six hours out of the day. The witness said subject 1 would sometimes use the UWMC computers, but mostly used his own laptop and phone. Another witness said subject 2 allowed an employee to bring in a personal laptop to help subject 1 with his websites, even though no one else was allowed to bring in personal devices. Another witness said subject 2 may not have known he was working on his business, but she did know the time spent on the computer was not work-related.

Assertion 3: An anesthesia manager (subject 2) was in a romantic relationship with an employee (subject 1) she directly supervised.

We were unable to determine whether an improper governmental action occurred.

We spoke with both subjects who denied being in a romantic relationship with each other. However, witnesses said the two were seen outside of the workplace kissing and shared a tent during a camping trip with co-workers. Subject 2 said that during the trip it began to rain and everyone scrambled to get into a tent, since subject 1 had not brought one he shared her tent. A witness said male co-workers offered to share their tents with him, but he chose to share a tent with subject 2. Additionally, a witness said subject 1 disclosed that he was in a relationship with subject 2. Another witness said subject 2 disclosed she had a relationship with subject 1, but claimed it had ended.

Witnesses said subject 2 provided special treatment to subject 1, which they believed indicated something was going on between them. According to witnesses, subject 2 gave a large portion of available overtime to subject 1 and allowed him to take last minute vacation time when she required at least two weeks' notice from everyone else and even then would sometimes deny the leave. We found an email from subject 1 where he requested and was granted leave time three days prior to the start of the requested leave. In another email we found subject 2 denied an employee's request for a day off to observe a religious holiday. The employee submitted the request 10 days prior to the actual vacation day but, according to the email, his request was denied because he did not submit the request two months prior to the requested day.

Assertion 4: An anesthesia manager (subject 2) destroyed defibrillator testing logs.

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

It was asserted that subject 2 removed and may have destroyed defibrillator testing logs. We requested and received copies of logs for January through March 2013. We found no evidence that the logs were destroyed.

During our investigation we found subject 2 stopped testing the defibrillators for six months. According to the subject, a former employee who was responsible for testing the defibrillators during each shift he worked, told her there was no need to test them because they did a self-test.

We spoke with the former employee who said he had tested the defibrillators for 12 years and would have no reason to tell her not to test them. He said that if there was no need to test them he would not have been doing it each shift he worked.

The subject said another employee told her they did need to test the defibrillators and after she spoke with the code cart committee chair she began testing again in October 2013. According to a witness the issue of testing was brought up with the subject as soon as she stopped the testing, which was in April 2013.

University's Human Resources Department

During our investigation witnesses told us the issues described above and other issues related to subject 2 were brought to the attention of UWMC's Human Resources Department (HRD) and upper management, with no results. A witness said that as soon as someone brought their grievances to HRD, HRD would go directly to subject 2 and reveal the identity of the person who filed the grievance. Shortly after, subject 2 would begin harassing the employee resulting in the person leaving or being dismissed. Witnesses said HRD was not interested in hearing anything the employees said and was only interested in protecting subject 2.

We spoke with the HRD consultant, who acknowledged she had received grievances against subject 2, which included the issue of being in a romantic relationship with subject 1 and showing favoritism to him. The HRD consultant said both subjects denied being in a relationship and subject 2 said she did not treat subject 1 any differently than the other employees. The HRD consultant said she told subject 2 that even if there was no relationship with subject 1 that staff had a perception that one did exist. The HRD consultant also told subject 2 regardless of whether she was being truthful in her denial of a relationship with subject 1 she was on notice that such a relationship was inappropriate. The HRD consultant said she cautioned subject 2 that after hours non-work-related social activities with subordinates could be perceived as relationships to others.

University's response and plan of resolution

Regarding the above assertions, the UW acknowledges and agrees with the SAO conclusions under assertions 1, 2, 3 and 4. The UW takes such allegations very seriously, and appreciates the SAO's attention to this matter and the opportunity to respond to the findings in the SAO's Whistleblower Investigation Report.

Although the section of the Whistleblower investigation report entitled "University Human Resources Department" does not describe formal assertions or findings made by the SAO, the

UW feels that it is important to provide a response to the following statements in the report: 1) that the issues described in the Whistleblower Investigation Report “were brought to the attention of UWMC’s Human Resources Department and upper management, with no results”; and 2) that “[w]itnesses said HRD was not interested in hearing anything the employees said and was only interested in protecting subject 2.”

- 1. UWMC HR and Management investigated the complaint that subject 2 was in a romantic relationship with subject 1 and had shown favoritism toward him. Both subject 2 and subject 1 denied any relationship, with subject 2 denying the relationship repeatedly. None of the other staff that UWMC HR spoke with in investigating the matter disclosed that they had observed subject 1 and subject 2 kissing or engaging in other displays of affection. As a result, UWMC was not able to obtain sufficient evidence to substantiate the claim of a romantic relationship involving subjects 1 and 2.*
- 2. Neither UWMC HR nor UWMC Management improperly revealed the identity of staff who had filed grievances alleging improper action by subject 2. Under the standard protocol such grievances are filed by the Labor Union for the individual staff members making the grievance (who are identified by name in the grievance). In this case, the Union filed grievances alleging that subject 2 had improperly retaliated against staff who reported the suspected romantic relationship. In order to investigate and evaluate these claims, it was necessary to speak with subject 2 to determine whether she had taken retaliatory actions against the individuals named in the grievance. As part of the inquiry of these claims, UWMC HR also discussed the perception of retaliation with subject 2 and coached subject 2 on the expectation of no retaliation.*

As an additional step under the standard grievance protocol, UWMC HR, UWMC Management, the individuals who filed the grievance, and their union representative met in person to discuss the grievance. At the conclusion of the grievance process, and after hearing the information provided by the grievants and their union, UWMC Management concluded that subject 2’s actions were not retaliatory in nature; and

- 3. UWMC HR and Management also investigated the allegation that defibrillator testing logs had been destroyed and, like the SAO, found no reasonable cause to believe that the anesthesia manager had destroyed defibrillator log records.*

Neither subject 1 nor subject 2 is currently employed by UWMC or by any UW entity.

Further, as noted in the Whistleblower Investigation Report, at the time when subject 2 learned that staff members were using unit computers for personal purposes, subject 2 completely stopped the personal use of the computers.

Finally, since the incidents described in the Whistleblower Investigation Report, the UWMC staff associated with the matters described above have participated in additional training in the areas

noted above. On April 2, 2014, a mandatory educational session for anesthesia technicians and the manager was provided by the Compliance Manager, UW Medicine Compliance. The content included conflicts of interests and use of institutional resources. In addition, on an annual basis, these staff complete a required training from UW Medicine Compliance.

State auditor's office concluding remarks

We thank University 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 42.52.160 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 Use of state resources.

(5) Prohibited uses.

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

Assertion 2:

RCW 42.52.070 Special privileges.

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

Assertion 3:

RCW 42.52.020 Activities incompatible with public duties.

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

Assertion 4:

RCW 40.14.060 Destruction, disposition of official public records or office files and memoranda – Record retention schedules.

(1) Any destruction of official public records shall be pursuant to a schedule approved under RCW 40.14.050. Official public records shall not be destroyed unless:

(a) Except as provided under RCW 40.14.070(2)(b), the records are six or more years old;

(b) The department of origin of the records has made a satisfactory showing to the state records committee that the retention of the records for a minimum of six years is both unnecessary and uneconomical, particularly if lesser federal retention periods for records generated by the state under federal programs have been established; or

(c) The originals of official public records less than six years old have been copied or reproduced by any photographic or other process approved by the state archivist which accurately reproduces or forms a durable medium for so reproducing the original.

(2) Any lesser term of retention than six years must have the additional approval of the director of financial management, the state auditor and the attorney general, except when records have federal retention guidelines the state records committee may adjust the retention period accordingly. An automatic reduction of retention periods from seven to six years for official public records on record retention schedules existing on June 10, 1982, shall not be made, but the same shall be reviewed individually by the state records committee for approval or disapproval of the change to a retention period of six years.

Recommendations for the destruction or disposition of office files and memoranda shall be submitted to the records committee upon approved forms prepared by the records officer of the agency concerned and the archivist. The committee shall determine the period of time that any office file or memorandum shall be preserved and may authorize the division of archives and records management to arrange for its destruction or disposition.

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