



Office of the Washington State Auditor
Pat McCarthy

Whistleblower Investigation Report
Department of Social and Health
Services

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September 18, 2017

Bill Moss, Acting Secretary
Department of Social and Health Services

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. 17-019 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, Public Disclosure/Ethics Administrator
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 Social and Health Services (Department) employee (subject) used state resources for non-work-related purposes.

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

About the Investigation

In addition to the subject's position with the Department, he owns and operates a private business selling novelty items and sports memorabilia.

Our Office obtained the subject's hard drive and created a forensic report based on the data retrieved. We reviewed the subject's Internet browsing history from May 2, 2016, through March 31, 2017, and found the subject used his computer for non-work-related purposes for 175 hours over 177 work days. His Internet browsing included 23 hours visiting websites related to his personal business, and 41 hours accessing his personal email account.

We found the subject used his state email to send and receive 81 personal emails between February 25, 2016, and February 1, 2017, including 31 emails related to his business. Attached to several of the emails were personal documents sent from a state scanner, indicating he used the scanner for non-work-related purposes. The subject had non-work-related documents on his computer, including documents related to his business.

We attempted to interview the subject; however, he canceled twice and failed to respond to an additional request for an interview.

A state ethics rule permits de minimis use of state resources as long as the use meets certain criteria. Among the criteria are requirements that any use is brief and infrequent, and "The use is not for the purpose of conducting an outside business, in furtherance of private employment, or to realize a private financial gain." Additionally, the Department has established policies that explicitly prohibit the use of state resources to access personal email accounts, or to conduct activities that support outside employment.

The subject's use of his email and computer for non-work-related activities was not de minimis; therefore, we found reasonable cause to believe an improper governmental action 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. 17-019. 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.

The subject of the investigation resigned from their employment with the Department effective August 3, 2017. Therefore, the Department will not proceed with further personnel action. However, following receipt of the final report, the Department will send a letter to the subject indicating that, had they not resigned, the Department would have reviewed the matter and taken any disciplinary action deemed appropriate. A copy of this letter will be placed in the subject's personnel file.

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.