



Office of the Washington State Auditor
Pat McCarthy

Whistleblower Investigation Report

Department of Transportation

Published February 20, 2018

Report No. 1020846





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Roger Millar, Secretary of Transportation
Department of Transportation

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. 18-008 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
Jeff Tawney, Special Investigations Manager
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 Transportation (Department) employee (Subject 1) frequently arrived to work late and left early, failed to use leave for his absences, and used his state computer for non-work-related purposes. Additionally, the whistleblower asserted a Department supervisor (Subject 2) permitted Subject 1 to use state resources for non-work-related purposes.

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

About the Investigation

Subject 1

Subject 1 is scheduled Monday through Friday, 7:30 AM to 4:00 PM with a 30-minute lunch. We reviewed Subject 1's time sheets, leave reports, emails, computer records and building entry logs. Because some data is stored only for a short period of time, our review period was limited to July 31, 2017 through October 20, 2017. We found Subject 1 consistently arrived at 7:30 AM, left at 4:00 PM, and used leave for his absences.

We reviewed Subject 1's internet browsing history from December 7, 2016, through October 11, 2017. State ethics law (WAC 292-110-010(3)(a)) permits de minimis personal use of state resources as long as the use meets certain criteria, including that it is brief and infrequent. We found Subject 1's use of his state computer for non-work-related purposes to be de minimis.

Therefore, we found no reasonable cause to believe an improper governmental action occurred.

Subject 2

Because Subject 1 did not use state resources for non-work-related purposes, it is not possible to find that Subject 2 permitted him to do so.

Therefore, we found no reasonable cause to believe an improper governmental action occurred.

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) - 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.

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.