



Office of the Washington State Auditor

Pat McCarthy

Whistleblower Investigation Report

Department of Social and Health Services

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February 22, 2018

Cheryl Strange, Secretary
Department of Social and Health Services

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. WB 17-024 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,

A handwritten signature in black ink that reads "Pat McCarthy".

Pat McCarthy

State Auditor

Olympia, WA

cc: Governor Jay Inslee
Andrew Colvin, Public Disclosure/Ethics Administrator
Kate Reynolds, Executive Director, Executive Ethics Board
Jacque Hawkins-Jones, Investigator

WHISTLEBLOWER INVESTIGATION REPORT

Assertions and Results

Our Office received a whistleblower complaint asserting a Department of Social and Health Services (Department) manager (subject):

- Granted a special privilege to a contract employee when she allowed the employee to use a state vehicle to commute to work
- Grossly mismanaged Division of Child Support funds when she purchased but failed to distribute information technology equipment
- Failed to use leave for all of her absences from work

We found reasonable cause to believe improper governmental actions occurred.

Background

The Department of Social and Health Services (Department) Division of Child Support (DCS) contracts with the Washington Association of Prosecuting Attorneys (WAPA), a non-profit organization, to provide support and assistance to the county prosecuting attorney offices throughout the state. Under this contract, WAPA provides training and information technology (IT) services to the prosecutors' offices for Title IV-D cases of the Social Security Act, in establishing child support payments. The Support Enforcement Project (Project), created within WAPA, includes one director and eight staff members. Additionally, a DCS employee, the subject, works with the Project to provide IT support and maintenance to the counties.

The Project works jointly with DCS staff to provide the following:

- Support – to keep prosecutors up-to-date on state and federal policy changes, fiscal changes and technical advancements that might affect case management, and provide technical assistance necessary to maintain computer hardware and software
- Training – to develop and deliver case management, performance measures, ongoing continuing legal education and other legal training programs for prosecuting attorneys and their staff
- Liaison – to promote uniformity of policy and performance regarding the establishment, collection and enforcement of child support among the counties. The contract requires the Project to contact each county at least once a year to provide training and consultation.

In 2013, DCS and WAPA entered into a contract for the 2013-2015 biennium. The contracted amount was over \$3 million, based on a budget developed by the Project. In February 2015, they

amended the contract and increased its value by \$60,000. In June 2015, the contract was amended to extend it through the 2015-2017 biennium for about \$3.4 million. The contract requires WAPA to submit invoices and supporting documentation to DCS when it requests reimbursements.

The subject of this investigation has worked for DCS for 29 years. The subject manages the IT side of the Project, with tasks that include assigning work to Project employees, determining the counties' equipment needs and making purchase requests on the Project's behalf.

The graphic demonstrates the working relationship between DCS and WAPA, as well as, supervision responsibilities in regards to the subject.

About the Investigation

Our Office requested the Department provide hard drives from all computers the subject used. We received four hard drives, network files, Outlook email files and leave reports from February 1, 2016, through February 28, 2017. Additionally, we received the subject's supervisor's (SR) email folders from February 1, 2016, through May 31, 2017.

In addition to the review of the data referenced above, we interviewed witnesses and the subject of this investigation.

State vehicle

We requested vehicle logs from the Department of Enterprise Services, which is responsible for managing the state car fleet, including vehicles assigned to the subject. We asked the assistant fleet operations manager whether a non-state-employee is allowed to drive a state vehicle. She said it is, as long as a Department head or designee approves.

In 2014, the subject was assigned two state vehicles, a Dodge van and a Honda Civic. According to witnesses, sometime in 2014 the subject began allowing a WAPA employee (JT), a non-state employee, to drive the Honda Civic exclusively.

During an interview with JT, she said her primary work location is her home office in Lynnwood, but she also has offices in Olympia, Yakima and Walla Walla, where she has another home. Additionally she travels throughout the state to the various prosecuting attorney offices, as needed. She said that in 2014, WAPA's Executive Secretary (TM) questioned the cost of her travel, and in response to his concerns, WAPA's Project Director (LL) instructed her to use the Honda Civic full time. JT said it was her understanding that LL received permission from the subject to allow her to use the vehicle.



When we spoke with TM, he said he was not sure whether JT drove one of the vehicles full time, because she reports directly to LL. However, JT said that although she works closely with LL, she reports directly to TM.

The subject said that in 2014, the DCS director and LL had a DCS employee research policies and rules on whether it was allowable for a non-state employee to drive a state vehicle. She said after they determined it was allowable, JT received exclusive access to the vehicle. The subject said that JT is aware that if another employee should need to use it she needs to make it available. However, she also said that employees sometimes get a vehicle from the motor pool when the need arises. The subject could not recall whether the current DCS Director (WM) was the director at the time, only that they made the decision a few years ago. She said the decision “was above her pay grade.”

WM and SR both said they were not aware that JT had exclusive access to a state vehicle. When we discussed the approval process, as described by the fleet operations manager, WM said he did not give permission for JT to use the vehicle exclusively. After speaking with the subject, we asked WM if he was the director in 2014, and if so, whether he participated in the conversation with LL about the vehicle as the subject described. He said he was the director in 2014, but does not recall having that conversation with LL.

We found reasonable cause to believe the subject granted a special privilege when she allowed a non-state employee to drive a state vehicle without receiving approval from the Department head or designee.

Leave

When our Office requests access to hard drives, the intent is to determine whether a subject of an investigation might be using state resources for non-work-related activities or to try to determine whether a subject is working on a specific date. We use the information gleaned from the hard drive along with other evidence to help our investigation. When reviewing computer use, we focus on the activities connected with the subject’s user name. In this instance, we were unable to use the information found on the hard drives, because the subject did not use her official user name when logging in to her computer. Instead, she logged in as the “administrator.” Additionally, according to witnesses, she also instructed other staff to use the same “administrator” login instead of their individual user names.

Because the hard drives lacked usable information, we focused on the information found in the subject’s and SR’s emails. This approach was also problematic because the subject predominantly used her WAPA email account, and we had access only to her Department account, which she used infrequently. During our review, we found emails indicating the subject either was going to be absent from work or had already missed work. We compared these notifications to the subject’s leave and found no corresponding leave submitted for the six absences.

Additionally, we reviewed emails for 27 specific dates identified in the whistleblower complaint reported to our Office as dates the subject was absent from work. We found no email activity on those dates and no corresponding leave.

The subject said her work schedule is from 8:30 AM to 5:30 PM, Monday through Friday. However, she cannot remember the last time she got off work at her normal time. She said her position is outcome-based and requires a lot of travel, sometimes with very little notice. She said she is not overtime eligible so accrues exchange time. We asked if she tracks this time or reports the time to SR; she said she does neither.

She said that in the past when she reported to WM, she never reported her exchange time because he understood the amount of hours she accrued. Since then, she has never felt she needed to report her hours to her subsequent supervisors. She said her position does not require a lot of supervision. She said she occasionally sends an email to WAPA IT employees or to LL notifying them when she has completed a task outside of normal work hours.

SR said the subject travels a lot for work and is in a “unique” position because her duty station is located at WAPA, not at a Department office. He said that although he does not speak with her daily, he does expect her to keep him apprised of her whereabouts. However, he said he did not require her to track her exchange time in the past, but now does. He has no concerns about her absences.

We provided information to the subject related to the dates we questioned and requested she provide evidence to support whether she worked on those dates. In response, she provided a list showing how many emails she either sent or received on each day in question. She did not provide any evidence that supports her list. Neither receiving an email nor sending one email in a day proves whether someone is working a complete day. The subject did not provide any evidence that she worked each day, nor did she provide evidence that she used exchange time if she was not working a complete day.

Based on the information we examined, we found evidence to support that the subject did not submit leave for 48 hours when she indicated in emails that she was not at work. We also question an additional 216 hours, when she purportedly was not in the office and we could find no evidence to the contrary.

Therefore, we found reasonable cause to believe an improper governmental action occurred.

Information technology equipment

WAPA has two office locations in Olympia – headquarters and the annex. It stores the majority of its IT equipment at the annex, where there is also office space and a large area used for training. SR and the subject said DCS purchases laptops, servers and desktop computers. WAPA purchases printers, scanners, switches and maintenance parts for laptops, servers and desktop

computers. The subject is responsible for submitting purchase requests to DCS when ordering for WAPA.

Because DCS pays for much of the equipment, the subject is responsible for tracking the inventory it purchases. In December 2017, our Office partnered with the Department and DCS to conduct an inventory of the equipment stored at the annex. We found discrepancies between the items we inventoried and the list of items that the subject submitted to DCS shortly before we conducted our inventory.

Most of the discrepancies were due to a failure to update the Department's internal tracking system regarding the equipment's physical locations. According to a DCS inventory specialist, DCS policy requires notification within five days when its equipment is moved.

The inventory specialist said that although she has access to the Department's tracking system, which DCS uses, she no longer has access to WAPA's inventory tracking system, also used to track DCS-purchased equipment. She said that in March 2017, for an unknown reason, she was no longer able to access to WAPA's system. When we mentioned this to SR, he said she should have access to WAPA's tracking system. He also said it is his expectation that the subject follow DCS policy and notify DCS when she moves equipment.

The subject said she sends the equipment transfer sheet to DCS "whenever she thinks about it" and acknowledged that she does not always send it promptly. She said she cannot update the Department's internal tracking system due to lack of access, but she updates WAPA's inventory tracking system, which she controls.

Between 2004 and 2016, DCS purchased 553 units of IT equipment that cost about \$817,000. We found 53 units, valued at about \$139,000, still in storage. Thirty-six of these units, including 20 laptops, were purchased in 2015 and 2016; the additional 17 units were purchased from 2012 to 2014.

SR said that because IT equipment has a longer shelf life and technology is more advanced than five or 10 years ago, his concern is not with the dates of purchase, but the amount that is purchased and stored. He said DCS is replacing less equipment on a yearly basis and storing much less inventory than in the past. He said he believes the same approach should be used when managing state-purchased WAPA equipment.

We found WAPA is storing about 40 percent of its inventory, with the most recent purchases in storage at the annex, while many counties are still using IT equipment purchased in 2013. Some counties still use laptops, servers and printers purchased as early as 2004, and two counties use a battery backup and printer purchased in 1997 and 1999, respectively.

When we asked the subject about the large number of laptops in storage, she said 10 laptops remain at the annex for training purposes. The subject said that to respond quickly to prosecuting

attorneys' equipment requests, she must keep a larger inventory on hand. She said the counties could not wait six weeks to have equipment ordered, delivered and installed.

However, we found emails from counties voicing frustration over the lack of IT equipment available and the subject's unresponsiveness to their requests for equipment and services.

One county office received a scanner over two years ago, needed to archive documents for the court system. As of October 2017, the scanner was still in the box waiting for the subject to get it up and running. According to a witness, the subject said that she could not get it to work. The county is concerned whether the scanner was still under warranty or if it is now obsolete.

Another witness said the county she works for has had problems with the subject for many years. For example, the witness said she requested laptops from the subject, who promised to deliver them by a certain time. Eleven months later, the county received the laptops, but only after the witness contacted WM requesting an update. The witness said a current WAPA employee used to work for the county and was capable of handling its IT needs. After joining WAPA, this WAPA employee continued to help the county when needed, but eventually that relationship ended. The witness said she suggested to WM that this WAPA employee work with the county because the subject was unresponsive, but that did not happen.

According to the witness, the subject had promised for eight years to build servers for the county. In late August 2017, the subject scheduled the build for the weekend beginning October 20, 2017. County employees adjusted their schedules so they could work over the weekend. On October 20, 2017, another county employee notified the witness that the subject had not communicated since the original August date and advised that because she did not provide the list of tasks she said needed completed before the build, they could not proceed. This other county employee said he and another employee were "concerned about the continued stability of our servers in both offices as [the subject] communicated to both of us that neither server was built to industry standards and that both servers are in bad shape."

Thirty minutes later, the witness forwarded the email to WM, SR and LL, stating: "I hope that the business concerns addressed in the email below are disconcerting and unprofessional enough to warrant meaningful action by DCS to address these very real and long standing [sic] concerns." About two hours later, at 2 PM the day before the scheduled build, the witness received an email from LL stating, in part, "Are you saying you don't want the team [subject and WAPA employee] to come up this weekend to start the movement of the virtuals to a new physical server?"

On the weekend of November 4, 2017, the subject and her team completed the build. However, according to a witness, a problem with the county's firewall needed to be resolved before they could connect the new server to the network. On December 7, 2017, this witness notified the subject that the firewall problem was resolved and ready for connection. The witness said he may

have received a “thank you” from the subject, but otherwise received no communication regarding when she would connect the server to the network. It remains disconnected.

The witness said the county can make do with what it has because of its larger size, but that it is the smaller counties that “are suffering” and the subject will not give them the requested equipment or communicate with them. Another witness said the subject makes it difficult for people to do their jobs because she will not give them the required equipment. This witness said it does not matter how many helpdesk tickets people submit or if they request something verbally – the subject does not respond to their requests.

SR said he heard the subject treats and responds to some counties better than others. He said he told the subject she should not play favorites and that all counties should receive quality work.

Witnesses said they believe the subject does not seek assistance or train anyone to help her as a way to ensure she always has a job. They say she has capable assistants but does not use them. Witnesses said the subject calls the assistants incapable.

Witnesses from both counties said they have reached out to WM and SR for help regarding the subject. The witnesses said conditions may change for a short time, but the subject then goes back to her unresponsive behavior. One witness said the subject is “ineffective,” “a bully” and “untouchable.”

The subject said she tries to provide the best service for the counties, but that sometimes the timelines for their requests are unattainable. She said she is the only one who has the knowledge to work in the programs the counties use, which are different from those used in the state system. For this reason, she is responsible for addressing all the needs of every county and might not be able to respond as quickly as some would like. She is aware that counties have called WM to complain about their perception that she was unresponsive. She said when an issue arises, she meets with WM, SR and LL, and a mutually agreed upon resolution is reached.

When we asked the subject about the WAPA employee identified as being capable to assist her, she agreed she was capable to assist in some aspects, but was not proficient in the counties’ programs. She said LL made the decision not to have her assist the counties, instead having her train county employees.

WM and SR said it is their expectation that the counties receive good customer service and timely responses to their IT needs, but the contract as currently written, is unclear on whether WAPA or DCS is responsible to prioritize the counties’ needs. WM and SR said there are longstanding issues between a particular county and the subject, which they are trying to address.

Although DCS management and WAPA think that the subject is very knowledgeable in her field, witnesses questioned her abilities based on their personal experiences with the subject. They said she wastes time and does not always know what she is doing. Witnesses would like additional IT

support to ensure the counties get needed equipment and help in a timely manner. Witnesses also said they believe LL and WM protect the subject and do not hold her accountable for her behavior.

SR said he is not aware of special treatment from WM, but there is a longstanding history between the subject and LL and there is the appearance of favoritism. He said the subject has a difficult time delegating and that this past year she worked in “crisis mode,” going from one high-priority project to another, while the smaller requests, such as scanners and email outages went unresolved. SR said he believes the WAPA employee (referenced above) has the ability and skills to assist the subject with the workload, but that he has no input on how LL manages her staff.

Witnesses said that this WAPA employee was helping the counties until about a year ago, when she had some kind of falling out with the subject and could no longer assist them.

We found reasonable cause to believe the subject grossly mismanaged her responsibilities when she failed to quickly provide needed equipment and IT services to the counties and failed to communicate with the counties.

Department’s Plan of Resolution

Thank you for the opportunity to review and respond to the State Auditor’s Office (SAO) report on Whistleblower Case Number 17-024. The Department of Social and Health Services (DHS) appreciates the assistance of the SAO by providing the Department with important facts from its investigation.

The report states that the SAO found reasonable cause to believe improper governmental actions occurred in three areas. According to the report the SAO found reasonable cause to believe the subject:

1. Granted a special privilege when she allowed a non-state employee to drive a state vehicle without receiving approval from the Department head or designee.

The Department believes the non-state employee is appropriately utilizing the vehicle to conduct business related travel. Paying for the use of the state vehicle is more cost-effective than reimbursing the employee for appropriate, work-related travel.

To ensure we are appropriately following policy (section 12.20.30 of the Enterprise Services Policy No BR.01.01 Enterprise Wide Transportation Policy), the Department head’s designee (in this case, the Director for the Division of Child Support) will provide permission, in writing, for the aforementioned individual to utilize the state vehicle for work-related travel. The Department will also ensure that the individual understands the appropriate use of the vehicle and reviews those rules annually.

The Department will review the aforementioned vehicle usage annually to ensure all usage is appropriate.

2. Failed to use leave for all of her absences from work. The SAO found evidence to support that the subject did not submit leave for 48 hours when she indicated in emails that she was not at work. The SAO also questioned an additional 216 hours when she purportedly was not in the office and the SAO could find no evidence to the contrary.

The Department will require the employee to submit leave slips for the 48 hours for which she indicated she was not at work.

The SAO did not find any evidence to confirm or deny the subject's whereabouts for 216 hours. This is due to the SAO not being able to find any emails from the subject, or unique log-in occurrences during these hours. This lack of electronic confirmation does not indicate an absence of work nor does it dictate the required submission of leave slips. It is entirely appropriate for the subject, given the nature of her work, to be in travel status (her duties require statewide travel) for days at a time. It is also appropriate, and likely, that the subject was indeed performing the duties of her working in various offices addressing unique software and hardware issues raised as concerns by customers.

The Department's Division of Child Support Information Technology Unit has developed and implemented a time tracking process and mechanism, which the subject (and others) are currently utilizing to ensure all their hours (work and leave) are appropriately and clearly accounted for.

3. Grossly mismanaged her responsibilities when she failed to quickly provide needed equipment and IT services to counties and failed to communicate with the counties.

The Department's contract with Washington Association of Prosecuting Attorneys (WAPA) is slated to end February 28, 2018. The Department will extend this contract through an amendment that adjusts the contract end date from February 28, 2018 to June 30, 2018. The Department has begun collaborating with WAPA to utilize this opportunity to jointly revisit, thoroughly review, and amend the contract language. The new contract will include more specific information about the IT services, including more detailed language about the budget, services, purchases, and the management of inventory.

The Division of Child Support Director and the ESA Assistant Secretary met with Tom McBride, WAPA Executive Secretary to discuss potential areas for improvement within the partnership. These meetings will continue, and the focus will remain open communication, collaboration, and commitment to improving the relationship between the two entities.

The Department is developing a customer satisfaction survey for all counties, which will include questions on IT service provision. The Department will use the results of the survey _ to improve

customer service to the counties, and to understand if the concerns expressed by counties interviewed by the SAO are more widespread. The Department and WAPA will also sponsor, convene, and facilitate a user group to regularly meet with representatives of the counties.

The Department will investigate if the business needs for the counties can be met by utilizing IT architecture that is more readily supported by the Department. A third party contractor may be used to help consult and implement, if possible. In the interim, the Department will add staff or contracted resources to support the current architecture.

The Department will develop a method to provide more visibility and oversight of IT service requests to ensure adequate and timely response.

State Auditor's Office Concluding Remarks

We thank Department officials and personnel for their assistance and cooperation during the investigation. We will follow-up with the Department within one year to determine if it implemented its planned corrective actions.

WHISTLEBLOWER INVESTIGATION CRITERIA

We came to our determination in this investigation by evaluating the facts against the criteria below:

RCW 42.40.020(4) - Definitions

“Gross mismanagement” means the exercise of management responsibilities in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.

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.

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.