



Office of the Washington State Auditor  
Pat McCarthy

# Whistleblower Investigation Report

## Department of Fish and Wildlife

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Kelly Susewind, Director  
Department of Fish and Wildlife

**Report on Whistleblower Investigation**

Attached is the official report on Whistleblower Case No. 19-003 at the Department of Fish and Wildlife.

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 Director of Communications Kathleen Cooper at (360) 902-0470. Otherwise, please contact Whistleblower Assistant Director Troy Niemeyer at (360) 725-5363.

Sincerely,

Pat McCarthy  
State Auditor  
Olympia, WA

cc: Governor Jay Inslee  
Mario Cruz, Internal Auditor  
Kate Reynolds, Executive Director, Executive Ethics Board  
Cristopher de la Peña, Investigator

# WHISTLEBLOWER INVESTIGATION REPORT

## Assertion and Results

Our Office investigated whether a Department of Fish and Wildlife (Department) employee (subject) used his state computer and email to organize a sports betting pool.

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

## Background

While conducting an investigation (WB 18-030) regarding the personal use of state resources by a different employee at the Department, we found an email sent by the subject. The email invited Department employees and their family members to participate in a March Madness “Pick’em Pool.” The email stated people could pay \$5 to enter the pool, and the best bracket would win the pot. The email also outlined the rules for scoring the pool and provided a link for participants to create their brackets.

As authorized by state law (RCW 42.40.040(4)), we began an investigation to determine if the subject committed an improper governmental action.

## About the Investigation

Our Office obtained the subject’s hard drive and emails from September 15, 2017, through September 14, 2018.

We found two emails from the subject regarding the March Madness sports pool. The first email announced the pool, sent to 28 state email addresses and five personal email addresses. The email also outlined the rules for the sports pool and provided a link to the site where participants could create their brackets. The second email gave the results of the pool and indicated at least 11 individuals participated.

We found a document with a tournament bracket used for the betting pool on the subject’s hard drive.

During an interview, the subject said a manager at the Department asked him to run the sports pool as a team-building exercise. The manager has since retired. The subject said the money won in the pool was used to throw a party for staff members. The subject believed his use of the email and computer should be considered de minimis since he didn’t spend more than two minutes sending the emails.

State law only allows sports betting using a 100 square sports pool board following rules defined under RCW 9.46.0335. The State Gambling Commission does not consider bracket pools or office sports pools as authorized gambling activities in Washington. The sports pool described by the subject in the email and the tournament bracket found on the subject’s hard drive do not comply

with the rules for a sports pool authorized under state law. This unauthorized gambling activity is a private activity that is not compatible with the subject's official state duties. The Ethics in Public Service Act (RCW 42.52.020) prohibits state employees from engaging in any private activities incompatible with their official state duties.

A state ethics rule (WAC 292-110-010(3)(a)) permits the de minimis personal use of state resources as long as certain criteria are met, including that the use is not to realize a private financial gain. Because gambling activities, such as sports pools, result in a private financial gain, the use of state resources for gambling cannot be considered de minimis.

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

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

*Washington State Fish and Wildlife (DFW) concurs with the results of the investigation, which concluded there was reasonable cause to believe an improper governmental action occurred based on the information presented within this report. DFW takes the assertions seriously and appreciates the assistance of the State Auditor's Office in developing important facts in its investigation. DFW wishes to acknowledge its many employees who are well versed in the laws, rules, regulations, policies, and procedures in place to ensure the proper use of state resources. This instance of improper use does not align with the policies of DFW or the training given to all employees. DFW will take appropriate action and will have a written plan of resolution.*

### **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:

### Assertion 1:

#### **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

#### **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.