



Office of the Washington State Auditor
Pat McCarthy

Whistleblower Investigation Report

Department of Corrections

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Stephen Sinclair, Secretary
Department of Corrections

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. 18-035 at the Department of Corrections.

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 results 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 Assistant Director of State Audit Troy Niemeyer at (360) 725-5363.

Sincerely,

Pat McCarthy
State Auditor
Olympia, WA

cc: Governor Jay Inslee
Liana Dupont-Smith, Audit Director/Ethics Administrator
Kate Reynolds, Executive Director, Executive Ethics Board
Cheri Elliott, Investigator

WHISTLEBLOWER INVESTIGATION REPORT

Assertion and Results

Our Office received a complaint asserting an employee (subject) at the Department of Corrections (Department) failed to submit leave for all of her absences from work. In addition, the complaint alleged that when she was at work she took several extended breaks throughout the day, leaving offenders waiting, and at times, requiring others to fulfill her duties.

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

About the Investigation

We reviewed the subject's emails, leave records, training schedule and hard drive. We also reviewed data from the Department's key watcher system, which records retrieval and return of facility keys by individual employees. The period of our investigation was March 27, 2017, through March 30, 2018.

The role of the subject was to assist offenders in navigating reentry into society by helping to obtain housing, job leads, medical coverage, social security disability and state-funded supplemental income. Additionally, the role may include helping offenders prepare psychologically for their release. According to the subject and witnesses, this preparation begins, on average, two to three months before release and can include one-on-one and group meetings. The subject worked Monday through Thursday, 7 AM to 5:30 PM; she did not telework.

Based on the data, we created a spreadsheet that showed the dates and times when the subject was absent from the facility, and we found no evidence to support that she was working or used leave.

We found that one day each month the subject's calendar noted "Community Day" with a complete absence from the facility. The subject said that she had five supervisors in the last two years. She said her first supervisor at the facility set aside one day each month for her to go out into the community to network and find resources that would benefit the offenders. She said that some days she spent as many as 12 hours out in the community. When she returned to work, she shared the information she had gathered with co-workers and her supervisors. She provided a list of the types of organizations she visited on her community days, but no specific names or contacts. She said she had appointments scheduled on those days, but did not note them on her calendar because it was not required.

We spoke with the subject's first supervisor, who said that while the community day was not her idea, she did allow the subject to go out into the community. She said the subject contacted many different organizations, and she thought the subject used her time well. However, the supervisor said "higher ups" in the Department were concerned about the amount of time the subject spent away from the office. She said she could not follow the subject around, but everything she said she was doing sounded legitimate.

Subsequent supervisors of the subject told us of varying concerns about the time the subject spent out of the office. One supervisor said that when she asked the subject for details about what she had done on a community day, the subject “was very vague” and repeatedly asked why the supervisor was questioning her since a previous supervisor had approved the community days. This supervisor said that she could not recall any deliverables or action items resulting from these days out in the community. She said there was not enough to do in the community for 10 hours each month.

The subject’s most recent supervisor said that she supervised the subject for about five weeks before the subject went on leave so was not in the position long enough to address the issue of the community days with the subject. She said she had worked at another facility with someone in the same position as the subject and that person did not have a community day, nor did she leave the office early to drop off applications at a Social Security Administration (SSA) office—another reason the subject gave for being absent from the facility. She said she had heard about the subject’s long breaks and that she would miss her offender appointments because of them. This supervisor said that the subject’s time would have better served the offenders if she stayed at the facility.

According to another of the subject’s supervisors, the subject’s job was to assist offenders in filling out forms to receive state and federally funded benefits. She also did mental health screenings, and from time to time, conducted mental health evaluations. He said that he assumed she was working on her community days but did not verify this. He did not receive anything in writing about who she met, but he asked her a few times and she told him where she went and how it was relevant. He said he did not know beforehand who she was meeting, and her calendar never indicated such, only that it was her community day. He also did not know why she would leave work early to go to the SSA office. He said he tried to keep track of her attendance, and would have to remind her to put in leave. Regarding the long breaks the complaint indicated she took, and the burden it placed on her co-workers, he said he addressed that with her on a couple of occasions. She would correct the behavior for a time, he said, and then regress.

Despite the subject’s claim that she shared information with her supervisors and co-workers, witnesses said the subject did not bring things back to the facility to share from her community days, with the exception of a presentation provided by an outside resource. One witness was not sure if that presentation was indeed a result of a community day.

We spoke with two employees in other facilities; one held the same position as the subject, the other was in a supervisory position within the classification. Both explained that the duties in their positions varied by facility because of the different offender populations and needs. Neither knew what the subject did on her community day, and neither was aware of anyone else in their position having the need to go into the community on a monthly basis. The two employees also said there was no need to go to an SSA office, because everything is filed online. When asked if the subject shared resources obtained during her community days, one employee referenced a shared website

where resources were posted, but said she had never accessed it and so was not aware if the subject posted anything to it. The supervisor said the subject would talk about resources during the monthly teleconferences with the group; however, he did not know how she obtained the information. We asked if he could check the SharePoint site to see if the subject had posted any resources to it; she had not. We asked if she might have sent resources or contacts via email. He checked his email and forwarded the emails from the subject for our review. Most were not directly from the subject, but ones she received and forwarded. We found one she sent directly in which she shared a link to a website and another with contact information for an intake and outreach coordinator.

We provided the spreadsheet we created to the subject and asked her to explain why she did not submit leave for her absences. At the time of our request, the subject was on leave and asked us to obtain documentation from her office that would assist her in responding: wall calendar, steno pad and day planner. We requested the items from the Department, and received a wall calendar, a steno pad and a three-ring binder. According to the person who collected the items from the subject's office, there was no day planner. After we forwarded the items to the subject, she said they were not the correct ones and that co-workers told her that things were taken from her office. The subject would not provide the names of the co-workers who said things were taken.

According to a human resources employee, the only things removed from her office, other than the items we requested, were her books, which were mailed to her at the request of a union representative. We spoke with witnesses, but were unable to confirm the subject's assertions that someone had taken a steno pad and day planner from her office.

The subject said that a co-worker interested in getting her contacts and resources had taken the steno and day planner she needed.

It is not clear why someone would need to take items from the subject's office if she had shared them freely, as she asserted.

Regarding her work outside the facility, the subject said that she spent time in the SSA office to coordinate offenders' federal and state benefits, drop off applications and work on a contract involving the two entities. According to her browsing history, she filed for the offenders' federal benefits online.

Supervisors and witnesses said the subject would approach them in the afternoon and say she was leaving early to go to SSA. Witnesses said that benefit applications are filed online. During our review period, we found only two instances when she sent an email advising that she was leaving early to go to SSA. We were unable to determine what other days she might have left early for this purpose because there was no additional supporting documentation. According to the Department, she was not in the position to negotiate a contract with the entity and part of her job was to assist the offenders in filing for their benefits through the online portal.

On many occasions, the subject sent emails calling out for the day for personal reasons, or sent emails announcing that she needed to leave early for personal reasons, and failed to submit the corresponding leave. We provided these emails to the subject asking her to explain why she did not submit leave. The system through which we sent the emails indicated that the subject did not open them. Instead, she again responded that she did not have the documents she needed to address her absences.

The subject stated in general that she “flexed” her time. When we pointed out that according to the data, she did not always make up her time, she responded that her time was “always made up or flexed” and that she did community events and worked on her days off. We did see that she worked on some Fridays, her scheduled day off, but she was either making up time for an earlier absence, or banking hours for a future absence.

Because we could neither refute nor corroborate whether the subject actually worked on her community days, we split the difference when calculating the amount of hours she was absent from the facility without submitting leave. Based on the apparent lack of need for the subject to go to SSA, and the information we received from the Department, we did not give her credit for time away from the facility on those two days.

To make the most conservative estimate of the time the subject was away from the facility, we used her training schedule to attempt to account for missing time and reached out to witnesses to corroborate some of the meetings that took her away from the facility. One particular meeting, according to the subject, took her to another facility for an entire day to plan a presentation. We spoke with one of the people she said she met with who told us the subject did not come to the facility, but participated on a one-hour telephone call. The subject said, and her calendar noted, she was at that facility the entire day. She did not submit leave for that day.

Based on all the data available, and without any input other than generalizations from the subject to the effect that she “flexed” her time, we calculated that the subject worked, on average, 34.9 hours each week. This is not accounting for the time she might have spent on extended breaks. Over 53 weeks, the subject failed to work or submit leave for 270.3 hours—an improper use of state resources.

Although we question 270.3 hours, without input from the subject or more precise information related to meetings attended by the subject, we cannot solidly determine that this number is accurate. We leave it to the Department to determine exactly how many hours of leave the subject may owe.

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

Department's Plan of Resolution

The Department considers any ethics violation to be serious. In relation to this case, the subject employee has since resigned from their position. However, the Appointing Authority will work with the Health Services Manager at the facility to ensure that effective management is in place and the future incumbent of the position is appropriately completing the duties of their job as expected.

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 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.

- (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.

- (2) Permitted uses.

- (a) Use of state resources for official state purpose. "Official state purpose" includes use of state resources to conduct official duties, activities reasonably related to the conduct of official state duties, activities related to state employment, and activities otherwise allowed by statute. Examples of official state purposes include:

- (i) Training and career development approved by the employing agency under RCW [41.06.410](#);

- (ii) Membership or participation in professional associations that enhance job-related skills of the state officer or employee, so long as use of state resources for this purpose has been authorized in writing;

- (iii) State or agency sponsored health, safety, or diversity fairs;

- (iv) Management of or access to state-provided or state-sponsored benefits, including health, deferred compensation, insurance, retirement, and the employee assistance program;

- (v) Searching and applying for state jobs, including taking an examination or participating in an interview; and

- (vi) Placement of nongovernmental web page links on an agency web site for official state purposes as long as the use does not violate RCW [42.52.180](#).

- (b) Agency approved use. An agency head or designee may authorize limited use of agency staff time and resources for the following uses as long

as that use is specifically authorized in an agency policy and conforms to that policy:

- (i) Supporting, promoting, or soliciting for charitable activities;
- (ii) Employee recognition, including birthday, retirement, wedding/baby showers, or other similar celebrations;
- (iii) Activities supporting agency organizational effectiveness provided the agency's policy allowing use of state resources for such purposes is approved by the executive ethics board;
- (iv) State or intermittent agency sponsored health activities, for example, vaccinations, diabetes screenings, cholesterol screenings; or recording participation in an agency or PEBB sponsored wellness program.

(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.