

WASHINGTON STATE UNIVERSITY



State Whistleblower Act


Heather Lopez
Chief Audit Executive,
Internal Audit

October 2017

Updated July 2017


Class Objectives

- What is the State Whistleblower Act?
- Definitions of Improper Governmental Action
- Whistleblower Process
- What to Do




State Whistleblower Act

- RCW 42.40
- Enacted by State Legislature in 1982, amended 1999 and 2008
- Provides an avenue for state employees to report suspected improper governmental action
- Reports issued at sao.wa.gov



Whistleblower Act Provisions

- Meant to encourage state employees to report improper governmental action(s)
- Makes retaliation against whistleblowers (*and witnesses participating in an investigation*) unlawful, and authorizes remedies for occurrence
- State Auditor's Office (SAO) investigates and reports
- Human Rights Commission (HRC) investigates asserted retaliatory actions



What is Improper Governmental Action?

Any action by a state employee undertaken in the performance of his/her duties which:


- Is a gross waste of public funds or resources
- Is in violation of federal or state law or rule
- Is of substantial and specific danger to public health or safety
- Is gross mismanagement
- Prevents dissemination of scientific opinion



Complaints


- Complaints may be made to:
 - SAO Whistleblower Division
 - WSU public officials: Chancellors; Chief Audit Executive, Internal Audit
- Must be made in writing
- Must be made in good faith

Investigation may be performed by SAO solely, in coordination with employee's employing agency.




Good Faith

- Complainant must have a reasonable basis in fact for the communication.
- Good faith is lacking when the employee knows, or ought to know, the report is malicious, false or frivolous.
- Identity of whistleblower must be kept confidential unless auditor determines the information was provided in other than good faith.



Investigation Process


- Complaints received in writing to include:
 - Employee(s) asserted to conduct improper act
 - Agency/department/location
 - Date/timeframe (one year statute of limitation)
 - Detailed description of improper actions
 - If known, specific rule or law violated
 - Any additional details
- Complaints may be anonymous
 - Harder to follow up if insufficient information available in complaint to pursue investigation



Intake Process

- Complaints reviewed to determine violation and if sufficient information to pursue (preliminary phase)
 - If anonymous – SAO triage
 - If name of complainant – SAO responds within 90 days


If received first by agency public official, must be forwarded to SAO within 15 calendar days



Investigation

- SAO entrance meeting with subject
 - WSU Internal Audit is audit liaison
- SAO procedure: interviews, data collection, other procedures depending on circumstances
- SAO close meeting with subject
- SAO reporting – to sao.wa.gov, copy of report to employing agency


If charge of ethics violation, the report is referred to Executive Ethics Board (EEB)



What is Improper Governmental Action?

Any action by a state employee undertaken in the performance of his/her duties which:


- IS A GROSS WASTE OF PUBLIC FUNDS OR RESOURCES
- Is in violation of federal or state law or rule
- Is of substantial and specific danger to the public health or safety
- IS GROSS MISMANAGEMENT
- Prevents dissemination of scientific opinion



Gross Waste of Funds, Gross Mismanagement

RCW 42.40.020 definition, states:

- (5)“Gross waste of funds” means to spend or use funds or to allow funds to be used without valuable result in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.
- (4)“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.




Washington State Parks & Recreation
(Report 1004706, 12/6/10)

- Assertion: The Commission (members) mismanaged and misused public funds related to a new sewer and water distribution system at Fort Flagler State Park.
- Finding: 'The Washington State Parks & Recreation Commission mismanaged contracts, resulting in a gross waste of public funds.'
- Details...




Washington State Parks & Recreation
(Continued)

- Ten-year project (8/00 to 5/09)
- Initially approved \$140,000 to replace recreational vehicle dump station
- Project grew to \$2 million in design and consulting fees, and construction – for a sewer system that did not work
- Additional expense of \$4.6 million to redesign and rebuild the failed sewer system
- Additional expense of \$734,799 to pump nonfunctioning system




Department of Transportation
(Report 1004974, 1/18/11)

- Assertion: Mismanaged road construction project - inadequate management led to design errors, environmental violations and unnecessary expenditures.
- Finding: 'We found the actions of the first (Department of Transportation) project engineer constituted a gross waste of public funds...We also found gross waste of public funds across the divisions responsible for this project.'
- Details...



Department of Transportation
(Continued)

- Work began 9/15/03, completed 8/21/08
- Project awarded for \$55.9 million
- Project closed at \$98.5 million
 - \$78.8 million to contractor, plus \$6.9m tax
 - \$10 million department engineering
 - \$2.8 million, other – agreements, vendors, etc.
 - Environmental violations led to add'l cost \$4.5m
- Charged: first and second project manager



What is Improper Governmental Action?


Any action by a state employee undertaken in the performance of his/her duties which:

- Is a gross waste of public funds or resources
- Is in violation of federal or state law or rule
- **IS OF SUBSTANTIAL AND SPECIFIC DANGER TO THE PUBLIC HEALTH OR SAFETY**
- Is gross mismanagement
- **PREVENTS DISSEMINATION OF SCIENTIFIC OPINION**



RCW 42.40.020 Definitions of Improper Conduct

- (8) 'substantial and specific danger to the public health or safety' means a risk of serious injury, illness, peril, or loss, to which the exposure of the public is a gross deviation from the standard of care or competence which a reasonable person would observe in the same situation.
- (6)(a)(v) 'Prevents dissemination of scientific opinion' or alters technical findings without scientifically valid justification, unless state law or a common law privilege prohibits disclosure.



What is Improper Governmental Action?


Any action by a state employee undertaken in the performance of his/her duties which:

- Is a gross waste of public funds or resources
- **IS IN VIOLATION OF FEDERAL OR STATE LAW OR RULE**
- Is of substantial and specific danger to the public health or safety
- Is gross mismanagement
- Prevents dissemination of scientific opinion



'Violation of Federal or State Law or Rule'

- ...if the violation is not merely technical or of a minimal nature
- Includes violations of federal and state laws/rules, to include state ethics law
- Majority of whistleblower complaints fall under this definition of improper governmental conduct




Whistleblower Reports

For Fiscal Years 2011 through 2017:


- 158 whistleblower cases
- 39 of these at higher education (four at WSU)

	Cases	Assertions	Substantiations	%
Fiscal 2011	22	36	19	53%
Fiscal 2012	17	23	16	70%
Fiscal 2013	13	19	12	63%
Fiscal 2014	24	31	21	68%
Fiscal 2015	31	38	16	42%
Fiscal 2016	27	37	15	41%
Fiscal 2017	24	30	9	30%



Example: Violation of Law or Rule


- DSHS (1004838) – Office Assistant used state resources for a personal business
- WWU (1004241) – Director failed to follow state travel regulations
- CCS (1004372)- Counselor used state computer for personal use
- DOT (1004569) – Program Manager failed to monitor a consultant who billed the department for services not rendered



What to Do?


If improper government activity or ethical violation is suspected:

- Contact supervisor, if possible
- May file complaint in writing with WSU public official:
 - WSU Chancellor (Spokane, Tri-Cities, Vancouver, Everett)
 - Chief Audit Executive, Internal Audit
- May file complaint in writing with State Auditor's Office (sao.wa.gov)



Resources

- WSU Internal Audit – (509) 335-5336, <http://internalaudit.wsu.edu>
- SAO – <http://www.sao.wa.gov>
- EEB – <http://ethics.wa.gov>
- WSU Whistleblower Policy – BPPM 10.20
- WSU Ethics Policy - BPPM 10.21



WASHINGTON STATE UNIVERSITY



This has been a
WSU Training
Videoconference

If you attended this live training session
and wish to have your attendance
documented in your training history,
please notify Human Resource Services
within 24 hours of today's date:

hrstraining@wsu.edu
