



King County

Whistleblower Protection Program

King County Ombudsman's Office

Whistleblower Protection Program Annual Report
January 1 to December 31, 2010

March 31, 2011

Background

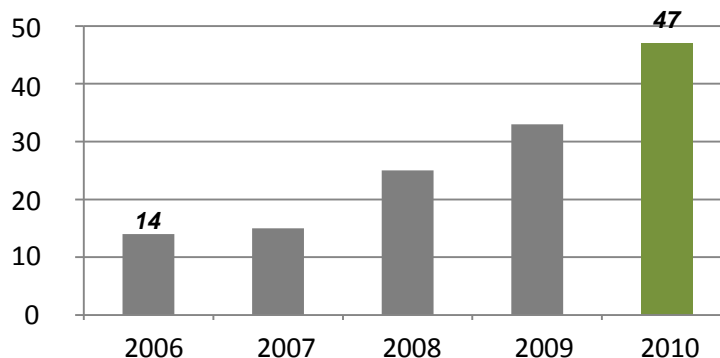
In 2009, the King County Council significantly strengthened the county's whistleblower protections, when it amended the Whistleblower Protection Code, KCC 3.42. These changes broadened the rights of county employees to report illegal conduct, major wrongdoing, and retaliation. The Ombudsman's Office is now the primary recipient of whistleblower complaints. We focus on helping employees determine whether their concerns can be resolved informally, or whether an investigation resulting in formal findings is warranted. The Ombudsman's Office investigates allegations of wrongdoing and may issue findings based on its investigations, require action plans, and fine departments in egregious cases. The Ombudsman's Office also leads problem solving efforts in appropriate cases, to resolve complaints fairly.

Whistleblowers & the Public Trust

The Whistleblower Protection Code encourages employees with knowledge of major wrongdoing to report improper governmental action, so that problems can be identified and fixed, and the County can operate more efficiently. The Code provides a roadmap to employees for reporting improper practices, as well as strong protections for employee whistleblowers and witnesses. The Code's strong protections of the rights of county employees to report illegal conduct, major wrongdoing, and retaliation demonstrate the County's commitment to supporting an efficient, ethical, and productive workplace. These efforts align with the Countywide Strategic Plan's key goals, including Service Excellence, Financial Stewardship, and a Quality Workforce.

Our 2010 Whistleblower Protection Program Annual Report shows an increase in the number of employee whistleblower inquiries and complaints received by the Ombudsman's Office. We expected these results in light of the expanded whistleblower protections of 2009, and the difficult cycle of layoffs prompted by reduced county revenues. As King County government does more with fewer resources, we expect that employee whistleblower protections will continue to be an important component for building and maintaining public trust in county government.

Whistleblower Cases 2006-10



2010 Whistleblower Case Activity

The table below lists whistleblower and whistleblower retaliation cases processed by the Ombudsman's Office in 2010. Departments not listed in the table did not have any whistleblower cases during 2010. The five (5) cases attributed to the Ombudsman's Office include anonymous employee requests for information on whistleblower reporting, or reconsideration of Ombudsman findings.

Department	Carried Forward into 2010	Cases Opened in 2010	Cases Closed in 2010	Carried Forward into 2011
Adult and Juvenile Detention	0	3	3	0
Community and Human Services	0	1	1	0
Executive Services	1	9	9	1
Natural Resources and Parks	4	4	7	1
Ombudsman	0	5	5	0
Public Health	2	3	5	0
Sheriff's Office	0	1	1	0
Transportation	2	12	7	7
Total	9	38	38	9

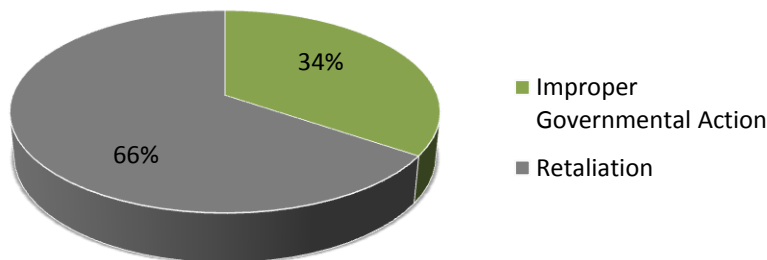
2010 Whistleblower Complaints by Type

The whistleblower code encourages county employees to report what they believe to be illegal or serious wrongdoing, called "*improper governmental action*". This generally means:

- illegal conduct;
- abuse of authority;
- gross mismanagement;
- substantial and specific danger to public health or safety;
- gross waste of funds; or,
- silencing scientific or technical findings.

Retaliation against an employee who is, or is perceived to be, a whistleblower is prohibited. The whistleblower code defines retaliation as any unwarranted, negative change in employment status, terms or conditions, and includes threats or attempts, as well as behaving in a hostile manner toward an employee, encouraging others to do so, or not preventing others from doing so.

2010 Whistleblower Complaints by Type

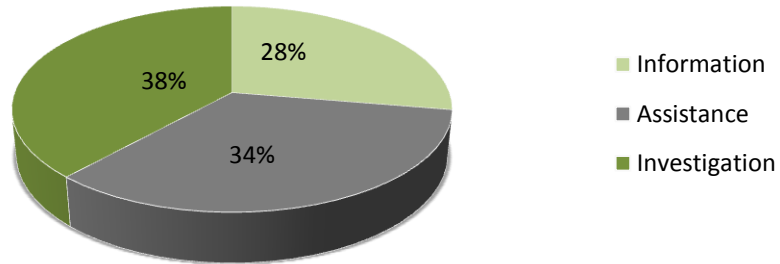


Action on Complaints

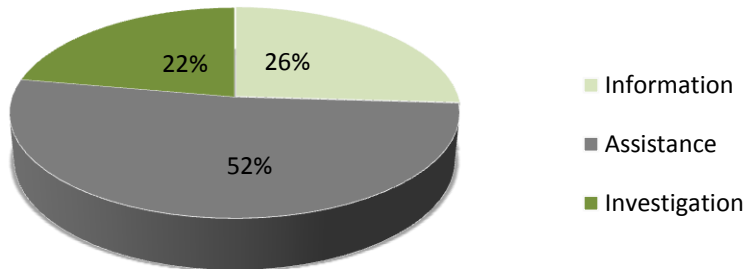
In 2010, the Ombudsman's Office received a total of 38 contacts from employees considering a report of improper governmental action or retaliation, in addition to cases carried forward and closed in 2010. These contacts resulted in one of three classifications:

- Information: Requests for information or advice which may result in referral.
- Assistance: Issues resolved through staff-level inquiry, facilitation, counseling or coaching.
- Investigation: Complaints that are not resolvable through assistance and are thoroughly investigated. Investigations involve independent evidence collection and analysis, including relevant records, witness testimony, laws, policies, and procedures. The Ombudsman makes formal findings, may develop recommendations, and follows up to ensure appropriate departmental responses.

**Improper Governmental Action Complaints
Opened or Closed in 2010**



**Retaliation Complaints
Opened or Closed in 2010**



Summarized Details of Select 2010 Cases

The nature and circumstances of whistleblower complaints varies widely. The selected case summaries below offer a sample of the range of allegations and resolutions.

Complaint	Resolution
<p>Alleged violation of waste disposal laws and other improper governmental action in Public Health Seattle King County.</p>	<p>Employee made seven allegations regarding practices within the employee's workgroup. The Ombudsman's Office investigated all seven and determined that the first six did not amount to improper governmental action. Regarding the seventh, the Ombudsman's Office found that some employees previously had disposed of a formaldehyde solution improperly and in violation of the law. However, there was no evidence that the disposal caused a substantial and specific danger to public health or the environment, and workgroup managers made changes to prevent future occurrences. Allegation partially supported.</p>
<p>Alleged endangerment of public health and safety in Department of Natural Resources and Planning.</p>	<p>Interviewed complainants, transmitted allegations to department, reviewed departmental investigation report. Conducted extensive, on-site and telephone interviews with management and employees. Determined that there are not safety issues to the level required for whistleblower finding, but submitted extensive advisory report to department regarding possible safety concerns to address. Unsupported, but with advisory findings. Allegation unsupported, but with advisory findings.</p>
<p>Alleged overloading of solid waste trucks causing substantial and specific danger to public health and safety in Department of Natural Resources and Parks.</p>	<p>Following extensive investigation including witness interviews and legal and factual research and analysis, Ombudsman found that grossly overloaded solid waste trucks present a substantial and specific danger to the public. Ombudsman therefore found that SWD is engaging in "improper governmental action" under the Whistleblower Protection Code when the trucks are grossly overloaded. Ombudsman recommends SWD install the necessary scales at all transfer stations as soon as is reasonably possible, and ultimately expect SWD's full compliance with legal truck weight limits. Allegation supported.</p>
<p>Alleged gross mismanagement, violation of law, and possible retaliation in Department of Natural Resources and Parks.</p>	<p>Communicated with councilmember's staff and executive's Customer Service Division to clarify nature of complaint and coordinate response. Conducted intake meeting with multiple potential complainants, did initial research. Complainants considered filing whistleblower complaint regarding gross mismanagement (classification issues and county facility that is not generating maximum revenue) and violation of law (obligations imposed by levy), later also whistleblower retaliation allegation. No basis for investigation, communicated results to complainants.</p>

<p>Alleged mismanagement and fraud related to management of levy funds in Department of Natural Resources and Parks.</p>	<p>Conducted intake with employee. Employee considered filing improper governmental action complaint alleging gross mismanagement (regarding poor management and personnel decisions), and a whistleblower retaliation allegation. Advised employee that disagreement with county policy is excluded from improper governmental action definition. Ombudsman's Office coordinated with executive's Customer Service Division. Complainant decided not to file improper governmental action or whistleblower retaliation.</p>
<p>Alleged unlicensed practice of medicine and violation of medical autonomy, amounting to improper governmental action in Public Health..</p>	<p>Conducted independent factual and legal research. Interviewed complaining employee, respondent, and witnesses identified by complainant. Complainant lacked personal knowledge of truth or falsity of allegations, no witnesses corroborated the allegations, and no other available evidence supported the allegations. Ombudsman therefore found respondent did not engage in unlicensed practice of medicine or violate medical autonomy, and therefore, respondent did not engage in improper governmental action. Allegation unsupported.</p>
<p>County using unauthorized type of public works contract in Department Executive Services.</p>	<p>Transmitted complaint, interviewed county attorney with expertise in this area of law, reviewed complaint, departmental response, relevant laws. No evidence to show that work order contracting is illegal nor that job order contracting is mandated by law. Allegation unsupported.</p>

Ombudsman Resource Issues

The 2009 whistleblower code amendments vested exclusive jurisdiction with the Ombudsman's Office to receive and investigate whistleblower retaliation cases. This exclusive authority has allowed our office to develop a consistent and fair approach in how these cases are addressed county-wide, and allows us to track departmental accountability and provide a clear source for information. This benefits both the employees who report these cases, as well as our County agencies and taxpayers. The code amendments also added mediation as an alternative way to resolve these cases where appropriate, which has allowed us to draw on the deep expertise of our staff in utilizing common-sense, problem solving approaches in conjunction with our investigative powers.

While whistleblower cases continue to comprise a small percentage of the approximately 3,000 inquiries the Ombudsman's Office handles each year, over half of the whistleblower cases that come to our office are now retaliation cases. Adding retaliation cases to the Ombudsman's portfolio has required a strategic shift in resources to handle these cases. Retaliation cases are high stakes both for reporting employees and for the County, since whistleblower allegations involve matters that could significantly and substantially threaten public health or safety, taxpayers' dollars, or even the mission of the agencies involved. These cases are also very time-intensive, typically requiring a large number of investigator hours. We will continue to monitor the impact on the office's workload.

Employee Feedback

King County offers meaningful whistleblower protections that are strong compared with similar laws nationally. These protections can nevertheless be counterintuitive in certain situations, and we work hard to educate complainants about their options for both investigation and informal problem-solving. The Ombudsman's Office is committed to ensuring that county employees and managers understand their rights and responsibilities under the whistleblower code, and to resolving these cases fairly and efficiently.

Feedback from employees indicated that most employees who contacted the Ombudsman's Office about whistleblower concerns were grateful for our assistance in explaining our jurisdiction, providing informal analysis of their issues, describing where whistleblower protection fits within the universe of options available to address workplace concerns, and counseling and coaching regarding their particular situations. Some employees were frustrated that "improper governmental action" is a generally high standard that covers significant wrongdoing rather than more-minor misconduct.