

From: Calderwood, Amy
Sent: Monday, June 16, 2003 4:53 PM
To: Chen, Ho-Chuan
Cc: Barahimi, Hossein; Ishimaru, Jim; Davis, Jim; Wellander, Sean
Subject: RE: Questions (retaliation investigation process, external travel model expert, and your roles and responsibilities)

Ho-Chuan, Hossein, Jim, Sean, and Jim:

I am happy to respond to your questions. As in the previous e-mail, I will respond to your questions by number.

(I would like to note that your e-mail states that you would have questions regarding the retaliation investigation process. However, your questions appear to be about the investigation of your initial whistleblower complaint (filed 3/3/03), and two subsequent claims of retaliation (filed 5/6/03 and 5/21/03). The investigation of employee reports of improper governmental action, and the investigation of complaints of retaliation for having reported improper governmental action are two separate processes. Reports of improper governmental action are investigated per KCC 3.42.050, and complaints of retaliation are handled per KCC 3.42.060.)

The Ombudsman Office investigates complaints under three different authorities -- the Citizen Complaint code (KCC 2.52), which allows for the investigation of citizen (and employee) complaints about administrative acts of administrative agencies; the Ethics Code (KCC 3.04), by which our office investigates alleged violations of the ethics code, such as conflict of interest and/or misuse of position/county resources; and the Whistleblower Protection Code (KCC 3.42), which provides for employee reporting of improper governmental action and retaliation for having reported improper governmental action.

1. In your May 28, 2003, response to our question #5, you said: "we have no way of preventing the Executive from referring the complaint to agency management."

Based on King County Code (KCC) 2.52.090, "The director shall have the following powers: A. To investigate, on complaint or on his own, any administrative act of any administrative agency; B. To prescribe the methods by which complaints are made, received and acted upon; he may determine the scope and manner of investigations to be made; ...",

Our understanding of this ordinance is that you have the authority as well as the responsibility to determine the "scope and manner" of any investigation. Is that correct?

In addition, your reference in response #3 to 3.04.50(A) refers to ethics code violations, is this your intent?

Your complaint was filed as a report of improper governmental action pursuant to the whistleblower code, and therefore, is being processed in accordance with the provisions of KCC 3.42.

My reference to the ethics code was an error. I meant to reference KCC 3.42.050(A) which states, in part (emphasis added):

If the ombudsman is an appropriate investigating official and the report does not meet the definition of a complaint under the ethics code, the ombudsman may refer the report to the department director of the agency in which the alleged improper governmental action occurred or to the *chief elected official of the branch of government implicated in the*

allegation, who shall ensure that the appropriate officer or agency responds to the complainant in writing within thirty (30) days of the receipt of the report, with a copy of the response to the ombudsman. If the ombudsman does not refer to another official, or if the other official's response is not timely or satisfactory to the ombudsman, the ombudsman may conduct an investigation.

You raise several questions about the Ombudsman's authority under KCC 2.52. Again, this code related to our office's investigation of citizen complaints about administrative acts about administrative agencies, and is not entirely applicable to our investigation of employee reports of improper governmental action pursuant to the whistleblower code.

2. Could you please tell us if you have informed the Council about any of the Complaints we have filed with your office?
Based on KCC 2.52.110, "After completing his consideration of a complaint (whether or not it has been investigated) the director should suitably inform the complainant and the administrative agency or agencies involved." Please let us know if you have informed the Council or intend to do so?

I have not informed the Council of any of the complaints you filed. Our Office reports formally to the Council on a triannual basis -- on the 15th of January, May, and September -- our reports include a synopsis of closed investigations, and a statistical report of other office activity. We do not report on the subject of open (pending) investigations. We consider this information confidential and not subject to public disclosure. The Council will receive notice of this complaint when it the investigation is concluded in a triannual report; or if we make some type of recommendation for legislation as a result of the investigation.

3. Would you please explain to us what the normal process is to investigate a retaliation complaint when it is referred to the Department by the Ombudsmen's office?
 - A. Does the Department investigate the complaint independently (interview both sides separately, verify statements, documentation provided, etc.) and then prep

are and send a report to your office to be sent to the people who filed the complaint? Or
 - B. Does the Department investigate the complaint, draft a report with help and input from the **subjects of the complaint**, and then send the report to your office for distribution? Or
 - C. Is there another process that the Department has to follow to meet the standards set by your office?
 - D. Are there any written guidelines or standards for conducting such an investigation?
- E. Even if the Ombudsmen refers the complaint to the department for response, is the Ombudsmen still ultimately responsible for the reasonableness, fairness, and accuracy of the final report?

Our processing of retaliation complaints is dictated by KCC 3.42.060. The code essentially established the Ombudsman Office as a "pass-through" for complaints about retaliation. When we receive a retaliation complaint, we immediately forward the complaint to the King County Executive or department director in which the retaliation is alleged to have occurred. The code directs the agency to send response to the complainant within 30 days. (There is an allowances

for one 45-day extension in KCC 3.42.060C)). While we ask that the department director or executive provide our Office with a copy of the response to the complainant, our forwarding of the complaint to the department is, essentially, the conclusion of our Office's role in the process.

4. What does the Ombudsmen do when she receives a report from the Department?
Does the Ombudsman check to make sure the standards and processes are followed?
Does the Ombudsman check to make sure the facts are as they are stated in the report?
What if the investigation is flawed, inaccurate, or one-sided, what is the Ombudsman's responsibility?

Before responding to these questions, could you tell me whether you are asking about our investigation of your initial report of improper governmental action, or about our handling of the retaliation complaints?

5. We heard from KCDOT HR Lorraine Patterson that the County is in the process of hiring David Evans & Associates, Consultants, as the external travel model expert to investigate issues we raised. We have two concerns with this selection: First, DEA has been hired by King County DOT in the past and can expect further opportunities in the future. Given this, there is a strong financial disincentive to find anything that is not what the people awarding contracts wish to hear. Secondly, although DES is a reputable firm with expertise in engineering and design, they are not specialists in travel demand model development. This function is not even listed on their website: (<http://www.deainc.com/services/transdesign.html>). It is surprising that the DOT chooses an investigator that lacks expertise in the specific area where we have raised concerns.

Lorraine Patterson assured me that David Evans and Associates can do the review of your complaint. Ms. Patterson has been open to discussion with me about scope and approach, and I assume that we will continue talking about these issues when DEA begins their review.

I think that we should wait to see what DEA comes up with before making judgments about their work. Neither DOT nor DEA will determine when this investigation is complete. That authority is vested by the whistleblower code with the Ombudsman.

As I said to Hossein earlier today, this Office has been privy to a number of internal investigations done by outside investigators and consultants who were hired by county agencies. In several of the cases, employees expressed concerns about impartiality and fairness, yet the investigations were fair and, in many cases, critical of the agencies.

I hope this information is helpful.

Amy Calderwood
Ombudsman-Director
King County Office of Citizen Complaints-Ombudsman
206-296-3506

-----Original Message-----

From: Chen, Ho-Chuan
Sent: Friday, June 13, 2003 11:41 AM
To: Calderwood, Amy
Cc: Barahimi, Hossein; Ishimaru, Jim; Davis, Jim; Wellander, Sean
Subject: Questions (retaliation investigation process, external travel model expert, and your roles and responsibilities)

Amy,

We have a few clarifying questions to ask you in regards to the retaliation investigation process, external travel model expert to be hired, and your roles and responsibilities during this process. Would you please explain the following concerns to us? Thank you for your assistance.

1. In your May 28, 2003, response to our question #5, you said: "we have no way of preventing the Executive from referring the complaint to agency management."

Based on King County Code (KCC) 2.52.090, "The director shall have the following powers: A. To investigate, on complaint or on his own, any administrative act of any administrative agency; B. To prescribe the methods by which complaints are made, received and acted upon; he may determine the scope and manner of investigations to be made; ...",

Our understanding of this ordinance is that you have the authority as well as the responsibility to determine the "scope and manner" of any investigation. Is that correct?

In addition, your reference in response #3 to 3.04.50(A) refers to ethics code violations, is this your intent?

2. Could you please tell us if you have informed the Council about any of the Complaints we have filed with your office?

Based on KCC 2.52.110, "After completing his consideration of a complaint (whether or not it has been investigated) the director should suitably inform the complainant and the administrative agency or agencies involved." Please let us know if you have informed the Council or intend to do so?

3. Would you please explain to us what the normal process is to investigate a retaliation complaint when it is referred to the Department by the Ombudsmen's office?

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- B. Does the Department investigate the complaint, draft a report with help and input from the **subjects of the complaint**, and then send the report to your office for distribution? Or
- C. Is there another process that the Department has to follow to meet the standards set by your office?
- D. Are there any written guidelines or standards for conducting such an

- investigation?
- E. Even if the Ombudsmen refers the complaint to the department for response, is the Ombudsmen still ultimately responsible for the reasonableness, fairness, and accuracy of the final report?
4. What does the Ombudsmen do when she receives a report from the Department?
Does the Ombudsman check to make sure the standards and processes are followed?
Does the Ombudsman check to make sure the facts are as they are stated in the report?
What if the investigation is flawed, inaccurate, or one-sided, what is the Ombudsman's responsibility?
5. We heard from KCDOT HR Lorraine Patterson that the County is in the process of hiring David Evans & Associates, Consultants, as the external travel model expert to investigate issues we raised. We have two concerns with this selection: First, DEA has been hired by King County DOT in the past and can expect further opportunities in the future. Given this, there is a strong financial disincentive to find anything that is not what the people awarding contracts wish to hear. Secondly, although DES is a reputable firm with expertise in engineering and design, they are not specialists in travel demand model development. This function is not even listed on their website: (<http://www.deainc.com/services/transdesign.html>). It is surprising that the DOT chooses an investigator that lacks expertise in the specific area where we have raised concerns.

Sincerely,

Ho-Chuan Chen, PhD, P.E., Supervisor
Hossein Barahimi, Transportation Planner III
Jim Ishimaru, Transportation Planner III
Sean Wellander, Transportation Planner III
Jim Davis, Transportation Planner II

Travel Forecasting and Data Management Group
CIP and Planning Section
Road Services Division
King County Department of Transportation

-----Original Message-----

From: Calderwood, Amy
Sent: Wednesday, May 28, 2003 4:36 PM
To: Wellander, Sean
Cc: Chen, Ho-Chuan; Barahimi, Hossein; Ishimaru, Jim; Davis, Jim
Subject: RE: Whistle-Blowers, Office Complaint

Sean:

I am going to respond number by number to the questions raised in Jim Davis' e-mail, which you forwarded to me.

1) The TFDM complaint is complex, which means that the investigation will be complex. I'm reluctant to say how long I think this will take, because I don't want to create an expectation that possibly can't be met.

2) As allowed by the Whistleblower Protection Code (KCC 3.42.050(A)), our office referred the complaint to the Executive. The code states that the executive shall ensure that the appropriate agency respond to the complainant, in writing, within 30 days of the filing of the complaint. Executive Sims met this requirement in April 17 response.

It is my understanding that the next step is for the independent investigator hired by DOT to begin an investigation of your complaint. Lorraine Patterson from DOT Human Resources has been coordinating this, and will be informing you in writing who the investigator is and acknowledging your second whistleblower retaliation complaint.

3) The Ombudsman is responsible for overseeing the investigation, and for determining at the conclusion of the investigation whether the investigation is satisfactory.

5) There hasn't been a "change" in the decision to have the Executive's office conduct the investigation. In response to concerns raised by the TFDM group that the complaint not go to Harold Taniguchi, I decided to refer the complaint to the Executive in accordance with 3.04.50(A). However, we have no way of preventing the Executive from referring the complaint to agency management.

I think if you are concerned about DOT having a conflict with the investigation you should consider making your concern known to the Executive. (When I spoke to Hossein and Sean last week, I indicated that I would pass this concern on to the Executive's Office. I put in a call to the person I thought would most likely know about the complaint; however, she didn't have any knowledge of the complaint. I will continue to attempt to speak with Exec staff about your concern.)

I hope this answers your questions. Please feel free to contact me should you have additional concerns/questions.

Thank you,

Amy Calderwood
Interim Ombudsman-Director
King County Office of Citizen Complaints-Ombudsman
206-296-3506

-----Original Message-----

From: Wellander, Sean
Sent: Wednesday, May 21, 2003 4:08 PM
To: Calderwood, Amy
Cc: Ho-Chuan Chen; Hossein Barahimi; Jim Ishimaru; Davis, Jim
Subject: FW: Whistle-Blowers, Office Complaint

Amy,
As we discussed earlier today, and as we've mentioned in our previous

emails, we would appreciate it if you would pass on our concerns about impartiality of the DOT to the executives office. Thanks.
Sean

-----Original Message-----

From: Davis, Jim
Sent: Tuesday, May 20, 2003 3:41 PM
To: Calderwood, Amy
Cc: Chen, Ho-Chuan; Barahimi, Hossein; Wellander, Sean; Ishimaru, Jim
Subject: RE: Whistle-Blowers, Office Complaint

Amy:

As you may recall, we filed our original Ombudsman's complaint on March 3rd, 2003. We asked that your office start an investigation regarding the Transportation Concurrency program in the CIP & Planning Section, Roads Services Division, Department of Transportation (DOT). We felt that the Concurrency program was involved with unprofessional, potentially unethical, and possibly illegal activities.

We previously indicated to you that we felt that having the DOT involved could compromise an investigation, since the DOT has a potential conflict of interest that could raise questions about the impartiality and fairness of the investigation and findings. In response to our concerns, on March 17th, 2003 you sent our complaint directly to the Executive's office. We then received a letter from the Executive on April 17th, 2003, informing us that they would hire an independent expert to look into the matter.

However, in your May 14th email to Jim Ishimaru, you stated: "I think DOT is waiting to see if the Feds are willing to do the investigation." Was this just a misstatement, or is the DOT directly involved in the process of this investigation? We were very surprised to read this, as this is something that we have already stated is inimical to an objective investigation.

On May 4th, we filed a retaliation complaint because we believe our working conditions have been detrimentally impacted by our whistleblowing actions. Our job responsibilities have been reassigned, and our supervisor, Ho-Chuan Chen, has recently been given an unwarranted written reprimand from our Division Manager. Because of these negative impacts, we would like to see these issues resolved as quickly as possible.

We do have a number of questions regarding the Ombudsman investigation process. Could you please provide a response to the following questions?

1. How long does it typically take to complete an investigation such as this?
2. What specific steps in the investigation process have been done to this point?

3. What will happen next (what is the schedule for further action)?
4. Who is responsible for ensuring that the investigation is done in a timely and objective manner?
5. Has there been a change in the decision to have the Executive office conduct the investigation of our original whistleblower complaint, and if so, why?

We have tried to follow all proper procedures and deadlines in this process; however we would appreciate answers to our questions and concerns.

Sincerely,

Ho-Chuan Chen
Hossein Barahimi
Jim Davis
Jim Ishimaru
Sean Wellander

-----Original Message-----

From: Calderwood, Amy
Sent: Wednesday, May 14, 2003 2:31 PM
To: Ishimaru, Jim
Cc: Chen, Ho-Chuan; Barahimi, Hossein; Wellander, Sean; Davis, Jim
Subject: RE: Whistle-Blowers, Office Complaint

Jim:

It is my understanding that the County was having some difficulty in getting an expert to do the review. Apparently, the UW and City of Bellevue didn't believe they had the resources to do the review. I think DOT is waiting to see if the Feds are willing to do the investigation.

I believe that a letter giving the whistleblower group an update on the process should go out shortly. I'll follow up on that.

Amy Calderwood
Interim Ombudsman-Director
King County Office of Citizen Complaints-Ombudsman
206-296-3506

-----Original Message-----

From: Ishimaru, Jim
Sent: Tuesday, May 13, 2003 3:40 PM
To: Calderwood, Amy
Cc: Chen, Ho-Chuan; Barahimi, Hossein; Wellander, Sean; Davis, Jim; Ishimaru, Jim
Subject: FW: Whistle-Blowers, Office Complaint

Amy,
Do you know the current status of our whistleblower

complaint(see below)? We recieved a letter from the Executive, dated April 17, 2003, indicating that an independent investigation would take place, and that we should expect to be contacted by the investigator. That was the last we heard regarding this investigation. Could you check on this for us? -Thanks

*Jim Ishimaru
Land Use and Data Management
Travel Forecasting and Data Management Group
CIP and Planning Section, Road Services Division, KCDOT
phone: 206.263.4736
fax: 206.263.4750
email: jim.ishimaru@metrokc.gov*

-----Original Message-----

From: Chen, Ho-Chuan
Sent: Friday, March 21, 2003 2:39 PM
To: Calderwood, Amy
Cc: Davis, Jim; Ishimaru, Jim; Wellander, Sean; Barahimi, Hossein; 'Whitney Hupf'
Subject: RE: Whistle-Blowers, Office Complaint

Amy,

Thanks for your update. Please continue the investigation and let us know the status whenever it is available. Thanks.

Ho-Chuan

-----Original Message-----

From: Calderwood, Amy
Sent: Friday, March 21, 2003 1:42 PM
To: Chen, Ho-Chuan
Cc: Davis, Jim; Ishimaru, Jim; Wellander, Sean; Barahimi, Hossein; 'Whitney Hupf'
Subject: RE: Whistle-Blowers, Office Complaint

The whistleblower complaint was delivered to the Executive's Office on March 17. The Executive has 30 days to provide a response to you.

The PAO represents King County, and will not represent employees in an action against the county. If you want legal advice or representation in some action against the county, you will have to hire your own attorney. If you choose to take legal action against the county, then our Office will discontinue its investigation of your whistleblower complaint.

I hope I've answered your questions. Please feel free to call/e-mail me if you have more questions, or need to talk about the process.

Amy Calderwood
Interim Ombudsman-Director
King County Office of Citizen Complaints-

Ombudsman
206-296-3506

-----Original Message-----

From: Chen, Ho-Chuan
Sent: Thursday, March 20, 2003 2:32 PM
To: Calderwood, Amy
Cc: Davis, Jim; Ishimaru, Jim; Wellander, Sean; Barahimi, Hossein; 'Whitney Hupf'
Subject: RE: Whistle-Blowers, Office Complaint

Amy,

This is to check on the status of our whistle-blower complaint filed with your office on March 3rd, 2003. Have you submitted it to the Executive's Office? In addition, does the County provide legal council in these cases? Or would we need to hire our own attorney? We want to make sure that we proceed correctly. Please let us know if you need any additional information from us, and we look forward to hearing from you soon. Thanks.

Ho-Chuan Chen, Ph.D, P.E.
Supervisor
Travel Forecasting and Data Management Group
CIP and Planning Section
Road Services Division
King County Department of Transportation
201 South Jackson Street M.S. KSC-TR-0317
Seattle, WA 98104-3856
(206) 263-4726

-----Original Message-----

From: Calderwood, Amy
Sent: Monday, March 17, 2003 12:34 PM
To: Barahimi, Hossein
Cc: Chen, Ho-Chuan; Davis, Jim; Ishimaru, Jim; Wellander, Sean
Subject: RE: Whistle-Blowers, Office Complaint

Given your concerns about Mr. Taniguchi's former management of the Road Services Division, I have decided to refer your complaint to Ron Sims for investigation. I am choosing to refer the complaint due to internal resource issues. I think it's best to get the ball rolling on this thing, and the best way to do that is to go with the referral process. When we receive the executive's response we will contact the TFDM group for review/discussion of the response, and make a decision about how to proceed.

By filing a whistleblower complaint, you are

protected from retaliation. (We note this in our letter when we serve the agency/executive with the complaint.) Should retaliation occur, it should be reported within 30 days to the Ombudsman Office. Whistleblower retaliation complaint forms are available on our website at <<<<<http://www.metrokc.gov/ombuds/whistleblower.htm>>>>>.

Please feel free to contact me with any questions.

Thanks,

Amy Calderwood

Interim Ombudsman-Director
King County Office of Citizen Complaints-
Ombudsman
206-296-3506

-----Original Message-----

From: Barahimi, Hossein

Sent: Monday, March 17, 2003
8:49 AM

To: Calderwood, Amy

Cc: Chen, Ho-Chuan; Davis, Jim;
Ishimaru, Jim; Wellander, Sean;
'Whitney Hupf'; Batayola, Maria

Subject: RE: Whistle-Blowers,
Office Complaint

Amy,

In response to your voice message, you can process our complaint as it is now. Later, if you need more information, we can add to it.

Also, we ask that instead of referring the complaint to the DOT Director for response, your office get involve and do the investigation or appoint someone without any connection to anyone involved to get charge of this investigation and get to the bottom of these matters. The DOT Director was the head of

Roads Services Division before he became the DOT Director. This history with the Roads Services Division and the group our complaint is about, they might not be impartial.

In addition, my group would like to know if we are protected against any retaliation under the Whistleblower Protection law.

Please notify the Executive's office regarding this Whistleblower complaint.

Our group is asking that this investigation be done in a timely manner.

Thanks,
Hossein

Hossein Barahimi

Program Manager, Travel Model Applications
Travel Forecasting and Data Management Group
CIP and Planning Section
Roads Services Division
King County Department of Transportation
201 South Jackson Street MS KSC-TR-0813
Seattle, WA 98104-3856
Phone: 206-263-4723 Fax: 206-263-4750
E-mail: hossein.barahimi@metrokc.gov

-----Original Message-----

From:	Calderwood, Amy
Sent:	Wednesday, March 12, 2003 11:04 AM
To:	Barahimi, Hossein
Cc:	Chen, Ho-Chuan; Davis, Jim; Ishimaru, Jim; Wellander, Sean
Subject:	RE: Whistle-Blowers, Office Complaint

We will be processing the whistleblower complaint according to the investigation provision of the Whistleblower Protection Code (KCC 3.42.050). We are referring the complaint to the DOT Director for response. The code requires that director investigate and respond to the complainant(s) within 30 days of receipt of the report. The department must copy the Ombudsman Office on its response. Upon receipt of the response, we will determine whether the response is adequate.

I expect to get the complaint out today. We will provide formal notice to you and your co-complainants.

Please let me know if you have any questions.

Amy Calderwood
Interim Ombudsman-
Director
King County Office of
Citizen Complaints --
Ombudsman
516 Third Ave, Rm 557
Seattle, Washington 98104
206-296-3506

-----Original
Message-----
From: Barahimi,
Hossein
Sent: Wednesday,
March 12, 2003
7:16 AM
To: Calderwood,
Amy
Cc: Chen, Ho-
Chuan; Davis, Jim;
Ishimaru, Jim;
Wellander, Sean
Subject: Whistle-
Blowers, Office
Complaint

Hi Amy,
My group (Travel Forecasting and Data Management group) filed a "Whistle Blowers" Office Complaint against the King County Department of Transportation, Roads Service Division, CIP and Planning Section, with the Ombudsman's office on 3/3/03. When I called you on 3/4/03, you told me that you will call me to let me know what steps your office need to take and how we will be involved in the process. Since I did not hear from you, my group is curious to know what is going on and would like to ask if you have a process time line that you could share with us. Thanks and I hope to hear from you soon.

***Hossein
Barahimi***

Program Manager, Travel
Model Applications
Travel Forecasting and
Data Management Group
CIP and Planning Section
Roads Services Division
King County Department of
Transportation
201 South Jackson Street
MS KSC-TR-0813
Seattle, WA 98104-3856
Phone: 206-263-4723
Fax: 206-263-4750
E-mail:
hossein.barahimi@metrokc.gov