

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: Dec. 6, 2016 **Approx Start Time:** 2:00pm **Approx Length:** 30 mins

Presentation Title: Whistleblower and Fraud Hotline Policy Update

Department: County Counsel

Presenters: Christina Thacker

Other Invitees: Evelyn Minor-Lawrence, DES Director

Julia Getchell, DES Assistant Director

Shari Anderson, Treasurer

Brian Nava, Treasurer's Office, Internal Auditor

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Approval of changes to the existing Fraud Hotline Policy, to include provisions required by state law, and make it an Employment Policy and Practice.

EXECUTIVE SUMMARY: The Board approved the creation of the Fraud Hotline Policy in 2006, as a means for employees to report suspected fraudulent activity in the County. In 2016, the Oregon legislature passed HB 4067, requiring public entities to implement a policy regarding employees who invoke their rights under that bill and under ORS 659A.203 (Oregon's whistleblower statute). This revised policy continues the Fraud Hotline Policy and includes the required language of HB 4067.

The revised policy differs from the original policy in two significant ways:

- (1) it removes procedural aspects from the policy, which will be captured in an operations document, created by the Internal Audit function within the County and
- (2) it adds the language required by HB 4067, which informs employees of their rights under HB 4067 and ORS 659A.203.

The revised policy continues the expectation that employees have a responsibility to report suspicious activity that could be fraudulent or wasteful (among other types of activities). The revised policy also makes clear that employees are also expected to disclose suspected violations of the law or gross misuse of public funds (among other types of activities), as well as that employees have rights and remedies available under Oregon law (e.g., that they will not face disciplinary action for disclosing their belief that the law has been violated, as long as their belief is held in good faith, is objectively reasonable, and is based on personal knowledge).

FINANCIAL IMPLICATIONS (current year and ongoing): n/a

STRATEGIC PLAN ALIGNMENT:

- How does this item align with your Department's Strategic Business Plan goals?

This revised policy supports County Counsel's goal of partnering with other departments to provide legal advice and support regarding changes in legal requirements (here with the Department of Employee Services and the Treasurer's Office).

- How does this item align with the County's Performance Clackamas goals?

This revised policy supports the County's strategic priority of building trust through good government—both internally and externally.

LEGAL/POLICY REQUIREMENTS:

These revisions are prompted by the Oregon legislature's passage of HB 4067 in 2016.

PUBLIC/GOVERNMENTAL PARTICIPATION: n/a

OPTIONS: n/a

RECOMMENDATION: Adopt the revised policy as presented. If the recommendation is not implemented, the County will not be in compliance with HB 4067.

ATTACHMENTS: Revised "Whistleblower and Fraud Hotline Policy"

SUBMITTED BY:

Division Director/Head Approval _____ n/a

Department Director/Head Approval _____ SM/ct

County Administrator Approval _____

For information on this issue or copies of attachments, please contact Christina Thacker 503.655.8363.

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“WHISTLEBLOWER AND FRAUD HOTLINE POLICY”

DISCLOSURE OF IMPROPER GOVERNMENTAL CONDUCT AND REPORTING OF WASTEFUL CONDUCT

I. POLICY STATEMENT

The Board of County Commissioners, County Administrator, elected officials and management representatives of Clackamas County are committed to the highest standards of legal and ethical behavior. All County employees, elected officials, authorized representatives, and volunteers are expected to act lawfully, ethically, and responsibly in performing their duties for the County. In accordance with this policy, all of these individuals are expected to share any good faith and objectively reasonable belief that conduct by other County employees, elected officials, authorized representatives, or volunteers constitutes Improper Governmental Conduct¹ or Wasteful Conduct if they have personal Knowledge of such conduct.

II. PURPOSE

This policy is created to foster a culture of ethical and responsible conduct, as well as a culture of compliance with federal, state, and local laws, rules, and regulations. In addition, this policy informs employees of the County’s commitment to protect employees from unlawful retaliation against any employee who discloses a good faith and objectively reasonable belief that another County employee, elected official, authorized representative, or volunteer has engaged in Improper Governmental Conduct. The County is also committed to the fair treatment of elected officials, authorized representatives, and volunteers who raise such concerns.

An additional purpose of this policy is to inform employees of the County’s expectations, as well as of their rights and remedies under Oregon law. This policy applies to Improper Governmental Conduct and to the broader categories of Fraud, Waste, and Abuse. Fraud, Waste, and Abuse (together “Wasteful Conduct”) include concerns of: accounting, auditing, or internal financial control issues; Financial Statement Fraud; Corruption; embezzlement; falsification of records; Misappropriation of Assets; theft; sabotage; vandalism; and misuse of County assets or services.

The County’s Fraud Hotline—EthicsPoint—provides a confidential method to make a Disclosure of Improper Governmental Conduct or a report of Wasteful Conduct. Disclosures of Improper Governmental Conduct may, in certain situations, include conduct that is also considered Wasteful Conduct and vice versa; however, the protections afforded to disclosures and reports differ according to these categories.

¹ Terms with initial capital letters are defined in this policy.

III. SCOPE

This policy applies to all elected officials, authorized representatives, volunteers, and employees.

IV. DEFINITIONS

For the purposes of this policy the following definitions apply:

- A. "Abuse" means the intentional, wrongful, or improper use or destruction of County resources or seriously improper practice that does not involve prosecutable Fraud. Abuse can include the excessive or improper use of one's position in a manner other than its rightful or legal use. Examples include:
- Failure to report damage to County equipment or property
 - Using one's position in one County department to gain an advantage over another County resident when conducting personal business in another County department
 - Serious abuse of County time, such as significant unauthorized time away from work or significant use of County time for personal business
 - Abusing the system of travel reimbursement
 - Receiving favors for awarding contracts to certain vendors
- B. "Abuse of Authority" means to deliberately exceed (or make improper use of) delegated or inherent authority in connection with the administration of a public program or a public contract;
- C. "Disciplinary Action" means any adverse employment action against an employee, including dismissal, demotion, transfer, reassignment, supervisory reprimand, warning of possible dismissal or withholding of work, whether or not the action affects employee compensation, and discrimination.
- D. "Disclosure" means a formal or informal internal or external communication that the individual in good faith reasonably believes evidences Improper Governmental Conduct.
- E. "Fraud" means a dishonest and deliberate course of action that results in the obtaining of money, property, or an advantage to which the person committing the action would not normally be entitled. Fraud includes the intentional misleading or deceitful conduct that deprives the County of its resources or rights. There are three categories of Fraud:
1. *Financial Statement Fraud*: means intentional misstatements, omissions, or disclosures in financial statements designed to deceive financial statement users. Fraudulent financial reporting often involves management override of controls that otherwise may appear to be operating effectively. Examples include:
 - overstating revenues, understating liabilities, or expenses manipulation
 - falsification or alteration of accounting records or supporting documents from which financial statements are prepared
 - misrepresentation of (or an intentional omission from) the financial statements of events, transactions, or other

significant Information, including the costs of goods or services provided or received

- intentional misapplication of accounting principles relating to amounts, classification, or manner of presentation

2. *Misappropriation of Assets*: means theft of the County's assets that causes financial statements not to be presented in conformity with generally accepted accounting principles, including false or misleading records or documents, possibly created by circumventing controls. Examples include:

- embezzling funds
- soliciting or accepting a bribe or a kickback
- theft of assets
- falsifying financial records to cover up theft
- submitting false claims for reimbursement
- theft or misuse of County money, equipment supplies, or materials
- causing the County to pay for goods and services that have not been received
- use of County equipment or property for personal gain
- skimming revenues
- falsifying payroll records

3. *Corruption*: means a person wrongfully using their influence in a County business transaction to procure some benefit for themselves or another person, contrary to their duty to the County or the rights of another. Examples include:

- accepting kickbacks
- engaging in conflicts of interest
- bid rigging
- economic extortion
- illegal gratuities

F. "*Gross Waste of Funds*" means an expenditure that is significantly out of proportion to the benefit expected to accrue to the County and is more than a debatable expenditure.

G. "*Information*" means public and private records, documents, and electronically stored data.

H. "*Improper Governmental Conduct*" means conduct or actions of County employees, elected officials, authorized representatives, or volunteers that may constitute:

1. Violation of any federal, state or local law, rule, or regulation;²
2. Mismanagement;
3. Gross misuse or Gross Waste of public resources or funds;
4. Abuse of Authority in connection with the administration of a public program or the execution of a public contract; or

² This includes a good faith and objectively reasonable belief of a violation of federal, state, or local anti-discrimination, labor, and employment laws, rules, or regulations.

5. Creation of a Substantial and Specific Danger to public health or safety resulting from County action.

- I. “*Knowledge*” means actual knowledge, that is, actual facts and Information acquired by a person.
- J. “*Mismanagement*” means serious County misconduct having the effect of actually or potentially undermining the County’s ability to fulfill its public mission.
- K. “*Reckless Disregard for its Truth or Falsity*” means a conscious disregard of a substantial and justifiable risk that the Information disclosed is false.

L. “Retaliation” means a materially adverse action by the County against an employee, for example, denial of a promotion, dismissal, or suspension. A materially adverse action is an action that might deter a reasonable person from disclosing Improper Governmental Conduct.

M. “*Substantial and Specific Danger*” means a specified 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 that a reasonable person would observe in the same situation.

N. “*Waste*” means the needless, careless, or extravagant expenditure of County funds, incurring of unnecessary expenses, or Mismanagement of County resources or property. Waste does not necessarily involve private use or personal gain, but almost always signifies poor management decisions, practices, or controls.

Examples include:

- purchase of unneeded supplies or equipment
- purchase of goods at inflated prices
- failure to reuse or recycle major resources or reduce waste generation

O. “*Wasteful Conduct*” means Fraud, Waste, or Abuse.

V. OPTIONS AND EXPECTATIONS REGARDING REPORTS AND DISCLOSURES

A. Options: In addition to or instead of the options included in Section VI.F., below, an individual may Disclose any objectively reasonable belief, held in good faith, of Improper Governmental Conduct and may report such belief of Wasteful Conduct by any of the following options:

1. utilizing the County’s Fraud Hotline (administered by EthicsPoint);³
2. notifying the Department of Employee Services Director;
3. notifying the County Administrator;
4. notifying the Oregon Government Ethics Commission (if the conduct may also be a violation of the State Code of Ethics (ORS Chapter 244)); or
5. any other appropriate state or federal agency.⁴

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³ EthicsPoint can be access via the County intranet site, at ethicspoint.com, or toll free at 1.866.294.9325.

⁴ These options are not intended to replace other opportunities for employees to bring other complaints or grievances pertaining to their employment. Specifically, County employees maintain their rights pursuant to an applicable collective bargaining agreement, other applicable County policies, as well as any rights they may have pursuant to federal and state laws.

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B. Expectations: All County employees, elected officials, authorized representatives, and volunteers are expected to act lawfully, responsibly, and ethically in performing their duties for the County, and are expected to report Improper Governmental Conduct and Wasteful Conduct if they have personal Knowledge of such conduct. Suspected Improper Governmental Conduct or Wasteful Conduct by an employee that is identified by a supervisor or manager may be addressed through the regular investigative process that may lead to employee discipline.

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VI. EMPLOYEE RIGHTS AND REMEDIES

A. No Disciplinary Action Regarding Disclosure: No County employee will be subjected to or threatened with Disciplinary Action for making a Disclosure of Information that the employee, in good faith, objectively and reasonably believes is evidence of Improper Governmental Conduct.⁵

B. No Disciplinary Action Regarding Legislative Request: Subject to statutory requirements, in response to an official request (either specifically or generally with any member of the Legislative Assembly, legislative committee staff acting under direction of a member of the Legislative Assembly, any member of the elected governing body of a political subdivision in Oregon or any elected auditor of a city, county, or metropolitan service district), any County employee may discuss the activities of:

1. The state or any agency or political subdivision in the state; or
2. Any person authorized to act on behalf of the state or any agency or political subdivision in the state.

No County employee will be subjected to or threatened with Disciplinary Action for such discussion. Employees must, however, inform their supervisor or appointing authority of any official requests for Information made to the County, as well as the substance of testimony made (or to be made) by the employee to legislators or members of the elected governing body of a political subdivision on behalf of the County.

C. No Disciplinary Action Regarding Disclosure of Warrant for Arrest: No County employee will be subjected to or threatened with Disciplinary Action for making a Disclosure of Information the employee in good faith, objectively and reasonably believes is evidence that a person who is receiving services, benefits, or assistance from the State of Oregon, or an agency or subdivision there, is subject to a felony or misdemeanor warrant for arrest issued by the state of Oregon, any other state, the federal government, or any territory, commonwealth governmental instrumentality of the United States, subject to ORS 659A.212(2) (which requires an employee to promptly disclose such to their immediate supervisor).

⁵ A County employee who is an attorney may report their Knowledge of a violation of federal, state, or local law, rule, or regulation by the County to the Attorney General, subject to the rules of professional conduct established pursuant to ORS 9.490. Additionally, the affirmative defense described herein may not be asserted by an employee who is an attorney, or by an employee who is not an attorney but who is employed, retained, supervised, or directed by an attorney, if the information disclosed pursuant to Section VI.F. is related to the representation of a client.

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- D. No Prior Notice: No County employee is required to give notice to the County prior to making a Disclosure under A. or C. or prior to engaging in a discussion under B.
- E. No Interference: No County employee will be discouraged, restrained, dissuaded, coerced, prevented, or otherwise interfered with when making Disclosures under Section A. or C., or engaging in discussions of matters protected under B.
- F. Affirmative Defense: Any County employee who makes a Disclosure of Information that the employee, in good faith, objectively and reasonably believes is a violation of federal, state, or local law, rule, or regulation by a County employee, elected official, authorized representative, or volunteer, will have an affirmative defense to a civil or criminal charge related to the Disclosure by the employee of lawfully accessed Information related to the violation, including Information that is exempt from Disclosure as provided in Oregon's Public Records Exemptions (ORS 192.501 to 192.505) or by County policy, if the Information is provided to:
1. A state or federal regulatory agency;
 2. A law enforcement agency;
 3. A manager employed by the County; or
 4. An attorney licensed to practice law in the state of Oregon if a confidential communication is made in connection with the alleged violation and in furtherance of the rendition of legal services to the employee that are subject to the attorney-client privilege under Oregon law.

An employee may not assert this affirmative defense if the lawfully accessed Information is disclosed or redisclosed by the employee or at the employee's direction to someone other than those listed above.⁶

This affirmative defense is available to an employee who discloses Information related to an alleged violation by a co-worker or supervisor if the Disclosure relates to the course and scope of employment of the co-worker or supervisor.

- G. Remedies: In addition to the affirmative defense and protections above, employees have additional remedies under Oregon law, in ORS 659A.

VII. RESPONSE TO REPORTS AND DISCLOSURES

- A. The Internal Audit division acts as the hotline administrator for EthicsPoint and oversees the response to concerns of Improper Governmental Conduct and Wasteful Conduct, with the following exception: concerns regarding the treatment of employees that potentially violate any federal, state or local law, rule, regulation, or County policy related to anti-discrimination and/or labor and employment law matters, will be addressed by the Department of Employee Services. Internal Audit will maintain operational safeguards and records regarding Improper Governmental Conduct and Wasteful Conduct. The Department of Employee Services will maintain operational safeguards and records regarding the above-described labor and employment law-related reports.

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⁶ There are additional limitations to this affirmative defense under Oregon law. See HB 4067 (2016).

- B. Except where the Disclosure or report pertains to potential criminal activity or potential violation of ORS chapter 244 regarding ethical conduct, the name of any individual raising allegations of Improper Governmental Conduct will be kept confidential unless waived by the individual. The County will take all reasonable steps to maintain confidentiality of the reporting individual.
- C. All responses, including any investigations, conducted due a Disclosure or report under to this policy will be done in a timely, impartial, and fair manner. An individual who is the subject of an investigation may have additional rights afforded pursuant to County policies, a collective bargaining agreement, and/or state or federal law.
- D. All County employees, elected officials, authorized representatives, and volunteers are expected to cooperate in any investigation performed pursuant to this policy.
- E. If an investigation concludes that Improper Governmental Conduct or Wasteful Conduct occurred, it will be shared by Internal Audit or the Director of Employee Services with the director of the department investigated, if that Director is not culpable or involved in the investigated conduct.⁷ The non-culpable County authority receiving the investigation findings will take necessary and appropriate action in response to the findings.

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VIII. PROTECTION AGAINST RETALIATION

- A. County employees, elected officials, authorized representatives, and volunteers are prohibited from Retaliating against a County employee because he or she has disclosed Improper Governmental Conduct in accordance with this policy. This prohibition includes the imposition of Disciplinary Action.
- B. Employees will be subject to discipline if the Information disclosed by the employee is known by the employee to be false, if the employee discloses the Information with Reckless Disregard for its Truth or Falsity, or if the Information disclosed relates to the employee's own Improper Governmental Conduct or Wasteful Conduct.
- C. An employee who believes he or she has been Retaliated against for disclosing Improper Governmental Conduct must advise their supervisor, manager, the Department of Employee Services Director, or the County Administrator immediately. The County representative receiving a report of Retaliation must notify the Department of Employee Services Director to take appropriate action to investigate and address complaints of Retaliation. A County employee who has been found to have Retaliated against an employee for disclosing Improper Governmental Conduct in accordance with this policy, will be subject to discipline, up to and including termination.
- D. In addition to protecting employees from Retaliation for Disclosure of Improper Governmental Conduct, the County is committed to the fair treatment of any individual who raises a concern about Improper Governmental Conduct or Wasteful Conduct. Any such issue should be brought to the attention of the County Administrator immediately, who will take appropriate action.

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⁷ In the event that the allegations involve culpable conduct of a department director, the investigation conclusions will be presented to the County Administrator. In the event that the allegations involve culpable conduct of the County Administrator, the findings will be presented to the Chair of the Board of County Commissioners.

Resources: HB4067 (2016); ORS 659A.203; ORS 659A.221.

DRAFT

Clackamas County Fraud Hotline Policy

Purpose and objectives

The Board of County Commissioners, County Administrator, elected officials and management of Clackamas County are committed to the highest standards of legal and ethical behavior. The Clackamas County Fraud Hotline has been established to provide employees with a confidential method of reporting suspicious activity, which is a significant step in deterring and detecting fraud.

Responsibilities

Managers and administrators at all levels are responsible for maintaining a system of internal controls which prevent, detect, or deter fraudulent or dishonest conduct. Each member of the management team is expected to recognize risks and exposures inherent within his or her area of responsibility and to be alert for any indication of irregularity.

Employees who know or suspect that other employees, business partners or vendors are engaged in a fraudulent act have a responsibility to report such activity to their supervisor, department head, elected official or the Clackamas County Fraud Hotline. Employees who, in good faith, report suspected fraudulent activity will be protected from reprisal or retaliatory actions.

Hotline operations

The Clackamas County Fraud Hotline is designed to create a reporting system that fosters trust, independence and confidentiality. All individuals participating in Hotline investigations, including Hotline Administrators, Investigators, Hotline Committee members and County management are expected to adhere to the following standards:

- Hotline investigations should be conducted, and the information derived, should be treated in a confidential manner.
- All parties must remain objective and un-biased.
- The investigation should be performed in a timely, cost efficient manner and all documentation should contribute to the objective of the investigation.
- Investigators should have the skills necessary to perform the investigation.
- Members of the Hotline Team should not to disclose the identity of the reporter during the investigation of the information provided, without obtaining written consent from the reporter.

Oversight, management and investigation of complaints or incidents received through the Clackamas County Fraud Hotline will be provided by the following individuals and committees:

Hotline Administrator

The Hotline Administrator is the County Treasurer or his/her designee. The Hotline Administrator is in charge of the daily operations of the Hotline. The Hotline Administrator is responsible for the following:

- Incident receipt
- Preliminary screening of the incident to determine whether it is actionable.
- Determination of type of investigation to conduct
- Incident assignment
- Dissemination of the incident to Investigator and Hotline Committee members
- Monitor the investigation
- Assign tasks to investigators
- Receive investigative reports
- Formulate opinion
- Present opinion to applicable Department Director or Elected Official, and County Administrator or Hotline Committee as required
- Present quarterly and annual reports to Hotline Committee and the Board of County Commissioners.
- Publicize Hotline to employees
- EthicsPoint liaison

Hotline Committee

The Hotline Committee should at a minimum consist of representatives of the following departments: administration, law enforcement, employee services, public relations, finance and elected officials. Members of the Hotline Committee are appointed by the County Administrator, and will meet on a regular basis. The Hotline Committee is responsible for the following:

- Determine actions on unsubstantiated or insufficient information complaints (simple majority vote of those present)
- Approve quarterly and annual reports (simple majority vote of those present)
- With Hotline Administrator, present reports to the Board of County Commissioners
- Publicize Hotline to employees
- Landing page design and changes

Hotline Investigators

Hotline Investigators are those persons who have been delegated with the responsibility for investigating and preparing reports on hotline incidents, as assigned by the Hotline Administrator. Hotline Investigators will generally be department heads, managers or other employees. Individual departments or the Hotline Administrator may request the use of outside investigators if there is inadequate expertise within the investigative pool. Hotline Investigators will typically perform the following tasks:

- Receive incidents and instructions from Hotline Administrator
- Investigate incident
- Prepare investigative report
- Update Hotline Administrator on progress

Director of Employee Services and County Counsel

The Director of Employee Services and County Counsel will have the same access to reports and incident notification as the Hotline Administrator. The Director of Employee Services or County Counsel will act as Hotline Administrators in the event the Treasurer is the subject of an incident.

Elected Officials and Department Directors

Elected Officials and Department Directors will be informed and involved in the investigation of Hotline incidents involving their departments. Elected Officials and Department Directors, or their designees, will work with the Hotline Administrator to formulate the investigative strategy, and will assure cooperation in obtaining all information and investigative material requested by the Hotline Administrator or Hotline Investigator. Elected Officials and Department Directors will work with the County Administrator to determine further course of action on substantiated incidents.

County Administrator

The County Administrator will appoint members of the Hotline Committee. If an incident or complaint is deemed substantiated by the Hotline Administrator, the County Administrator and relevant Elected Official or Department Director will be notified immediately and will make all decisions for further action on the incident.

Advocate

The Advocate will be appointed by the County Administrator and will act as Hotline Administrator in the event that the Treasurer, the County Administrator, Director of Employee Services, County Counsel and all members of the Hotline Committee are named in a Hotline incident. The Advocate must be completely independent of Clackamas County.

Independence and Conflicts

No employee who acts as a Hotline Administrator, Hotline Investigator, Hotline Committee member, or who has access to EthicsPoint, will be allowed to be involved in any investigation in which they are implicated

In addition to the standard notification setup, in the event that a Department Director is named in an incident, the County Administrator will be notified. In the event that the County Administrator is implicated in an incident, the Chair of the Board of County Commissioners will be notified.

Reportable Incidents

The Fraud Hotline is designed to accept reports of fraud or theft only. This Hotline is not designed to accept reports of discrimination, harassment or any other employee/employer related incident. If any employee files a report of an incident outside the scope of the Hotline they will be notified that the incident will neither be investigated nor forwarded for investigation to any other department. In the EthicsPoint system, the reporter will be reminded of this requirement in the form of a question/response, and will be directed to contact DES or their union representative directly.

This policy sets forth the investigation process that the County will use to investigate complaints filed through the Clackamas County Fraud Hotline. This investigation process will not be used for other types of complaints.

Ethics complaints relating to violations of Standards and Practices issues should be directed to the State of Oregon. If any employee files a report of an incident outside the scope of the Hotline they will be notified that the incident will neither be investigated nor forwarded for investigation to any other department. In the EthicsPoint system, the reporter will be reminded of this requirement in the form of a question/response, and will be directed to contact Oregon Standards and Practices directly.

Incidents requiring emergency notification should call 911 or the Employee Emergency Hotline, 503-655-8468. Links will be provided on the landing page to Federal or Oregon agencies that may be the more appropriate agency to receive the incident report.

Anonymity

Employees reporting via the Hotline may choose to identify themselves or remain anonymous. Because Clackamas County is a public employer, employees who choose to identify themselves will be asked to sign an identity release. The identity of any employee reporting any incident will be used for investigative purposes only and will generally not be disclosed outside of the Hotline Team.

Anonymity, continued

It is illegal to retaliate against an employee for reporting fraud or testifying in court or before a legislative assembly about fraudulent activities. If an employee believes they have been retaliated against as a “whistleblower” they should submit their complaint to the Director of Employee Services.

Confidentiality

Strict confidentiality shall be maintained over Hotline documents at all times. Hotline cases should not be discussed with anyone outside of the investigative team or the Hotline Committee. All EthicsPoint documents should remain on the EthicsPoint server and should not be emailed, printed or downloaded.

Hotline cases should not be investigated or discussed via County email. Any discussion should occur on the EthicsPoint server. When evidence is sent via interoffice courier it will be sealed in a separate envelope bearing a “confidential” stamp.

Hotline submissions fall under the confidentiality exemption of ORS 192.502(4). The elements of the exemption are:

- Information submitted on condition that it would be kept confidential;
- The information was not required by law;
- The information must be of a nature that reasonably should be confidential;
- The public body must show that it has obliged itself in good faith not to disclose the information; and
- Disclosure of the information must cause harm to the public interest.
- All documents are therefore exempt from disclosure under the public records laws.

Under no circumstances should departments or agencies provide information to any outside parties directly. If a request for information is made, it should be made in writing to the County Administrator. Only the County Administrator, or the elected official and the County Administrator if applicable, can determine what, if any, information should be provided.

Reporting

On a quarterly and annual basis, the Hotline Administrator will prepare a Clackamas County Fraud Hotline Report. Once approved by the Hotline Committee, the report will be presented to the Board of County Commissioners for review.

Other interested parties

Hotline incident reports, investigative notes, reports and recommendations may be of use to law enforcement or external auditors. Decisions to make those files and reports available, on a case by case basis, will be made by the County Administrator, elected official and/or the Hotline Committee.

Related documents

Clackamas County Ethics Policy
Whistleblower Disclosures ORS 659A.200 to 659A.224
BOLI OAR 839-010-0000



ADMINISTRATIVE POLICIES

SECTION: 200 – General Administration	POLICY#: 205	
TITLE: Reporting of Improper Governmental Conduct	R & O #:	
	IMPLEMENTED BY PROCEDURE #: 205 - A	
SPONSORING DEPT/DIV: County Administrative Office		
ADOPTED:	REVIEWED:	REVISED:

PURPOSE: It is the purpose of this policy to create an environment that provides the following:

1. County employees, officials, contractors, and members of the public are clearly informed of the opportunities to report concerns and/or complaints of improper governmental conduct;
2. Reports of improper governmental conduct are fairly and timely investigated and appropriate action taken;
3. Reporting employees, officials, contractors and members of the public are free from retaliation; and
4. Where appropriate, the reporting employee, official, contractor or members of the public are provided confidentiality.

AUTHORITY: Pursuant to ORS 297.765, Washington County has authority to provide the provisions outlined in this policy.

APPLICABILITY: This policy applies to all Washington County employees, contract employees, applicants for employment, contractors and authorized volunteer positions.

This policy shall apply to all reports of improper governmental conduct received through the County’s Ethics Matters Hotline or by any other means, from County officials, employees, contractors and from members of the public.

DEFINITIONS:

"Abuse" means the intentional, wrongful or improper use or destruction of County resources, or seriously improper practice that does not involve prosecutable fraud. Abuse can include the excessive or improper use of an employee’s or official’s position in a manner other than its rightful or legal use. Examples include but are not limited to failure to report damage to County equipment or property; using one’s position in a County department to gain an advantage over another County resident when conducting personal business in another County department; serious abuse of County time such as significant unauthorized time away from work or

significant use of County time for personal business; abusing the system of travel reimbursement; receiving favors for awarding contracts to certain vendors.

“Administrative Review or Administrative Investigation” means any review or investigation that was commenced without the County having received a report of improper governmental conduct through the Ethics Matters Hotline or by any other means.

“Corruption” means employees or officials wrongfully using their influence in a business transaction to procure some benefit for themselves or another person, contrary to their duty to their employer or the rights of another. Examples include but are not limited to accepting kickbacks; engaging in conflicts of interest; bid rigging; economic extortion; illegal gratuities.

"Disciplinary action" means any adverse action, including dismissal, demotion, transfer, reassignment, supervisory reprimand, warning of possible dismissal or withholding of work, whether or not the action affects or will affect employee compensation.

“Financial Statement Fraud” means intentional misstatements, omissions or disclosures in financial statements designed to deceive financial statement users. Fraudulent financial reporting often involves management override of controls that otherwise may appear to be operating effectively. Examples may include overstating revenues or understating liabilities or expenses. Specific examples include but are not limited to manipulation, falsification or alteration of accounting records or supporting documents from which financial statements are prepared; misrepresentation of or an intentional omission from the financial statements of events, transactions, or other significant information; intentional misapplication of accounting principles relating to amounts, classification, manner of presentation or disclosure.

“Fraud” means a dishonest and deliberate course of action that results in the obtaining of money, property, or an advantage to which County employees or officials committing the action would not normally be entitled. Fraud includes the intentional misleading or deceitful conduct that deprives the County of its resources or rights. There are three categories of fraud: (1) Financial Statement Fraud, (2) Misappropriation of Assets, and (3) Corruption. Examples include but are not limited to falsifying financial records to cover up theft; theft or misuse of County money, equipment supplies or materials; intentionally misrepresenting the costs of goods or services provided; falsifying payroll information; use of County equipment or property for personal gain; submitting false claims for reimbursement; soliciting or accepting a bribe or a kickback; intentional use of false weights or measures.

"Improper governmental conduct" means conduct or actions of County employees, officials, contractors, or agents that constitute waste, fraud or abuse.

“Investigating employee or official” means that employee or official who is in a position of authority, pursuant to this policy, to investigate a complaint or concern of alleged improper governmental conduct.

“Misappropriation of assets” means the theft of an entity’s assets that causes the financial statements not to be presented in conformity with generally accepted accounting principles. Misappropriation of assets includes false or misleading records or documents, possibly created by circumventing controls. Examples include but are not limited to embezzling funds; theft of assets; causing an entity to pay for goods and services that have not been received; skimming revenues; payroll fraud.

"Mismanagement" means serious County misconduct having the effect of actually or potentially undermining the County’s ability to fulfill its public mission.

"Reasonably believes is evidence" means, in addition to other circumstances bearing on the reasonableness of the belief, that the employee has personal knowledge of facts tending to establish the violation of law, rule or regulation, or the existence of mismanagement, abuse of authority, gross waste of funds, or substantial and specific danger to public health or safety.

"Receiving employee or official" means, that employee or official who receives through the County’s ethics hotline or by any other method, a report, complaint or concern of improper governmental conduct.

"Reckless disregard for its truth or falsity" means a conscious disregard of a substantial and justifiable risk that the information disclosed is false.

"Reporting Employee" means, an employee who reasonably believes they have evidence of improper governmental conduct.

"Substantial and specific danger" means a specified 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.

“Waste” means the needless, careless or extravagant expenditure of County funds, incurring of unnecessary expenses, or mismanagement of County resources or property. Waste doesn’t necessarily involve private use or personal gain, but almost always signifies poor management decisions, practices or controls. Examples include but are not limited to purchase of unneeded supplies or equipment; purchase of goods at inflated prices; failure to reuse or recycle major resources or reduce waste generation.

GENERAL POLICY: A guiding principle for Washington County is for all County employees to commit themselves to the highest standards of ethical conduct and to accept full accountability for their actions. In keeping with this guiding principle, Washington County encourages its employees, officials, contractors and members of the public to report any known or suspected improper governmental conduct to a responsible County representative.

POLICY GUIDELINES:

1. Reporting Improper Governmental Conduct.

- 1.1. Any County employee, official, contractor or member of the public who discloses information that they reasonably believe is evidence of improper governmental conduct shall not be retaliated against and, if a County employee, shall not be subjected to or threatened with disciplinary action for the disclosure.
- 1.2. A reporting employee, official, contractor or member of the public may disclose any allegation, concern, or complaint of improper governmental conduct (a) by utilizing the County's Ethics Matters Hotline; (b) to the County Auditor, in accordance with the Auditor's responsibilities set forth in the County Charter (Section 46); and/or (c) by reporting an allegation, concern, or complaint of improper governmental conduct that may also be a violation of the State Code of Ethics (ORS Chapter 244) to the Oregon Government Ethics Commission.
- 1.3. Any official, contractor or member of the public who reasonably believes that he or she has evidence of improper governmental conduct may report it to the Washington County Human Resources Manager. All reports of improper governmental conduct received from officials, contractors, or members of the public shall be processed and investigated in accordance with the provisions of Section 2 herein.
- 1.4. An employee who reasonably believes he or she has evidence of improper governmental conduct shall report it in the following manner:
 - 1.4.1. First to the employee's supervisor. Where the reporting employee reasonably believes that the improper governmental conduct involves the supervisor or there may not be a fair and impartial investigation or there could be retaliation for reporting, the reporting employee shall report the alleged improper governmental conduct directly to his or her department head; if the reporting employee reasonably believes the alleged improper governmental conduct should not be reported to his or her department head for any of the reasons set forth above, the reporting employee shall report the conduct to the County Administrator; and if the reporting employee reasonably believes the improper governmental conduct should not be reported to the County Administrator for any of the reasons set forth above, the reporting employee shall report the conduct to the Chairman of the Board of County Commissioners.
 - 1.4.2. Where the reporting employee reasonably believes there is an imminent likelihood of substantial and specific danger if action is not taken immediately, the reporting employee may report the alleged improper governmental conduct directly to that County employee or official having authority over the matter and not personally involved in the alleged improper governmental conduct.
 - 1.4.3. Where the alleged improper governmental conduct is reasonably believed to have been committed by a County official appointed by the Board of

Commissioners, the reporting employee shall report the conduct to the Chairman of the Board of County Commissioners.

- 1.4.4. Where the alleged improper governmental conduct is reasonably believed to have been committed by an elected County official, the reporting employee shall report the conduct to the Chairman of the Board of County Commissioners or a non-culpable Board member.
- 1.4.5. Where the reporting employee reasonably believes the County Commission has culpability in the alleged improper governmental conduct, the reporting employee may report the conduct to the County Auditor for investigation.

2. Investigation.

2.1. The County employee or official receiving the report of improper governmental conduct shall be responsible for reporting the matter to the Human Resources Manager. The HR Manager shall create a log in the County's Ethics Matters computer system documenting the date, time, and subject matter of any report of improper conduct that is received. The HR Manager shall be responsible for determining the manner in which the allegations of improper governmental conduct will be investigated. Except as otherwise required pursuant to sections 2.1.2 and 2.1.3, the investigation shall remain confidential until such time as the written report required under subsection 2.4 is completed.

- 2.1.1. The HR Manger may elect to investigate the allegations by him or herself; assign the investigation to a subordinate employee; request that the investigation be conducted by the receiving employee's supervisor or department head; request the investigation be conducted by another office, agency, or department in the County; or, as provided in section 2.1.5, below, utilize the services of an outside agency. Where appropriate, the HR Manager may consult with the County Auditor, County Administrative Office, or the Office of County Counsel in electing how to proceed with an investigation.
- 2.1.2. When an investigating employee or official determines during an investigation that fraud or other criminal activity may be occurring or may have occurred, the investigating employee or official shall notify the Human Resources Manager. The Human Resources Manager shall notify the appropriate law enforcement agency of the potential fraud or other criminal activity.
- 2.1.3. When an investigating employee or official determines during an investigation that a violation of any provision of ORS chapter 244 may be occurring or may have occurred, the investigating employee or official shall notify the Human Resources Manager. The Human Resources Manager shall notify Oregon Government Ethics Commission of the potential violation.

- 2.1.4. Upon providing notice pursuant to sections 2.1.2 or 2.1.3 herein, the investigating employee or official may elect to suspend the investigation, pending completion of the referral agency's review of the matter.
 - 2.1.5. If the HR Manger reasonably believes that an investigation of a non-criminal matter cannot be conducted in an impartial, fair or complete manner by him/herself or any office, employee or official in the County, upon approval of the County Administrator, County Counsel or County Board Chairman, the matter may be referred to an outside public agency willing to accept responsibility for the investigation (such as another county's Administrative Office or Office of County Counsel).
 - 2.1.6. If the County Auditor is the receiving official of a report of improper governmental conduct, the County Auditor may refer the matter to an outside public agency upon his or her own discretion and without prior approval of any County employee or official.
 - 2.2. Any investigation conducted pursuant to this policy shall be done in a timely, impartial, and fair manner. An employee who is the subject of an investigation of improper governmental conduct (and therefore may be subject to discipline) may have certain rights afforded pursuant to County Personnel Rules, a collective bargaining agreement and/or state or federal law. The investigating employee or official shall confer with the Office of County Counsel pertaining to such rights.
 - 2.3. The investigation shall be done in a manner that will not result in any unreasonable embarrassment to the subject(s) of the investigation or any witnesses. All County employees and officials shall cooperate in any investigation.
 - 2.4. The investigating employee or official, upon conclusion of the investigation, shall prepare a written report setting forth the allegations and findings. The investigating employee or official shall present his or her report to the Human Resources Division Manager and the non-culpable County department head having authority over the affairs being investigated; or, in the event the allegations involve a department head, the report shall be presented to the County Administrator; or, in the event the allegations involve the County Administrator, the report shall be presented to the Chairman of the County Board of County Commissioners. A copy of any written report finding that that employees, officials, or contractors of the County have been involved in activities that constitute waste, fraud or abuse shall be provided to non-culpable members of the Board of County Commissioners.
3. Response to Findings of Improper Governmental Conduct.
 - 3.1. The non-culpable County authority receiving the investigation findings shall take necessary and appropriate action. Such action may include, but is not limited to,

initiating the implementation of discipline, modifying department procedures, and/or presenting the report to the appropriate County employee or official.

- 3.2. Should an investigation find that improper governmental conduct has occurred, the reporting employee, upon request, shall be provided with a copy of the written report, except that any personnel action(s) taken as a result of the investigation may be kept confidential. Any information provided to the reporting employee, that may be considered confidential, shall not be publicly disclosed by the employee.
- 3.3. Upon completion of the investigation, the written report shall be subject to disclosure as a public record under ORS 192.410 to 192.505 unless an exemption from disclosure set forth in a provision state or federal law applies to the records, except that the identity of the reporting individual or employee shall remain confidential.

4. Responsibility of Reporting Employee/Protection Against Retaliation/Confidentiality.

- 4.1. County officials and employees are prohibited from retaliating, including the imposition of disciplinary action, against a member of the public or any Washington County employee because he or she has, in good faith, reported improper governmental conduct. However, employees may be subjected to discipline if the information disclosed by the employee is known by the employee to be false, if the employee discloses the information with reckless disregard for its truth or falsity, or if the information disclosed relates to the employee's own violations, mismanagement, gross waste of funds, abuse of authority or endangerment of the public health or safety.
- 4.2. An employee who believes he or she has been retaliated against for reporting improper governmental conduct should advise their supervisor, the Human Resources Manager or County Administrator. The County official receiving a report of retaliation shall take appropriate action to investigate and address complaints of retaliation. A County employee who has been found to have retaliated against an employee for reporting, in good faith, improper governmental conduct shall be subject to discipline.
- 4.3. Notwithstanding the above, any employee who believes he/she has been retaliated against for the reporting of improper government conduct may bring a civil action as provided by ORS 659A.215.
- 4.4. The names of employees or other individuals reporting allegations of improper governmental conduct shall be kept confidential unless waived by the subject employee or reporting individual. The County employee receiving the report shall take reasonable steps to maintain confidentiality of the reporting employee. Unless, otherwise required by law:

- 4.4.1. The identity of the reporting employee or other reporting individual described in this policy, shall not be disclosed, during the investigation, without the written consent of the reporting employee; and
 - 4.4.2. No supervisory or management employee of the County shall reveal to an employee accused of improper governmental conduct the identity of the reporting employee or other reporting individual.

- 5. Whistleblower Protection (ORS 659A.200 and 659A.203).
 - 5.1. No employee of Washington County shall be prohibited from discussing, in response to an official request, either specifically or generally with any member of the Legislative Assembly, legislative committee staff acting under direction of a member of the Legislative Assembly, any member of the elected governing body of a political subdivision in the state or any elected auditor of a city, county or metropolitan service district, the activities of:
 - 5.1.1. The state or any agency or political subdivision in the state; or
 - 5.1.2. Any person authorized to act on behalf of the state or any agency or political subdivision in the state.
 - 5.2. No employee of Washington County shall be disciplined or threatened with discipline for disclosing any information that the employee reasonably believes is evidence of:
 - 5.2.1. A violation of any federal or state law, rule or regulation by the state, agency or political subdivision;
 - 5.2.2. Mismanagement, gross waste of funds or abuse of authority or substantial and specific danger to public health and safety resulting from action of the state, agency or political subdivision; or
 - 5.2.3. Subject to ORS 659A.212(2), the fact that a person receiving services, benefits or assistance from the State or agency or subdivision, is subject to a felony or misdemeanor warrant for arrest issued by the state of Oregon, any other state, the federal government, or any territory, commonwealth governmental instrumentality of the United States.
 - 5.3. No employee of Washington County shall be required to give notice prior to making any disclosure under Sections 5.1 and 5.2.
 - 5.4. No employee of Washington County shall be discouraged, restrained, dissuaded, coerced, prevented or otherwise interfered with when making disclosures or engaging in discussions of matters protected under Sections 5.1 and 5.2.
 - 5.5. An employee's good faith and objectively reasonable belief of a violation of federal, state or local law, rule or regulation by the employer shall be an affirmative defense to a civil or criminal charge related to the disclosure by the employee of lawfully accessed information related to the violation, including information that is exempt

- from disclosure as provided in ORS 192.501 to 192.505 or by Washington County policy, if the information is provided to:
- 5.5.1. A state or federal regulatory agency;
 - 5.5.2. A law enforcement agency;
 - 5.5.3. A manager employed by the County;
 - 5.5.4. An attorney licensed to practice law in the state of Oregon if a confidential communication is made in connection with the alleged violation described in this Section 5.5 and in furtherance of the rendition of legal services to the employee that are subject to ORS 40.225.
- 5.6. An employee may not assert the affirmative defense described in Section 5.5 if the information:
- 5.6.1. Is disclosed or re-disclosed by the employee or at the employee's direction to a party other than the parties listed in Section 5.5;
 - 5.6.2. Is stated in a commercial exclusive negotiating agreement with Washington County, provided that the agreement is not related to the employee's employment with Washington County; or
 - 5.6.3. Is stated in a commercial nondisclosure agreement with Washington County, provided that the agreement is not related to the employee's employment with Washington County.
- 5.7. The affirmative defense described in Section 5.5 is available to an employee who discloses information related to an alleged violation by a coworker or supervisor described in Section 5.5 if the disclosure relates to the course and scope of employment of the coworker or supervisor.
- 5.8. The affirmative defense described in Section 5.5 may not be asserted by an employee who is an attorney or by an employee who is not an attorney but who is employed, retained, supervised or directed by an attorney if the information disclosed pursuant to Section 5.5 is related to the representation of a client.
- 5.9. Disclosure made under Section 5.2, 5.3, and 5.5 herein are subject to the rules of professional conduct established pursuant to ORS 9.490.
- 5.10. Subject to the rules of professional conduct established pursuant to ORS 9.490, a public employee who is an attorney may report to the Attorney General the employee's knowledge of a violation of federal, state or local law, rule or regulation by Washington County.
- 5.11. Disclosure of information pursuant to Section 5.5 does not waive the attorney-client privilege or affect the applicability of any exemption from disclosure of a public record under ORS 192.501 to 192.505.
- 5.12. Notwithstanding Section 5.5, information protected from disclosure under federal law, including but not limited to the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), may be disclosed only in accordance with federal law.

6. Other Opportunities for Reporting.

The policies specified herein are for the purpose of reporting allegations of improper governmental conduct. These policies are not intended to replace other opportunities for employees to bring complaints or grievances pertaining to their employment. Specifically, County employees maintain their rights pursuant to personnel rules (Article 5) and/or a collective bargaining agreement to appeal imposition of discipline; their right pursuant to personnel rules to appeal County policies or actions (Article 10); and any rights they/may have pursuant to federal and state law to present civil complaints.

7. Exceptions.

Exceptions may only be granted by the Washington County Board of Commissioners unless such authority has been delegated to the County Administrator.

8. Implementation:

Elected officials and department directors are expected to be knowledgeable of, and shall be responsible for, implementing this policy within their respective departments. Observance of this policy is mandatory for all County employees and violation may result in disciplinary action (up to and including termination).

Any sustained violations of this policy resulting from an investigation conducted pursuant to Section 2 of this policy or from an Administrative Review or Administrative Investigation shall be logged into the County's Ethics Matters computer system and reported to non-culpable members of the Board of County Commissioners.

9. Periodic Review:

This policy shall be reviewed by the County Administrative Office at least every three years, or more often if needed, and updated as necessary.