

Title

Performance Audit of the State Employee Whistleblower Program

Presented to

**Washington State
Office of Financial Management**

Report Date

January 16, 2015



Lean Process improvement
Strategic planning
Performance measurement
Performance Audits
Organizational design



***Performance Audit of the
State Employee Whistleblower Program***

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January 16, 2015

Wendy Jarrett
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Dear Wendy:

Pursuant to our Work Order # OFM No. 1607, we have completed our Performance Audit of the State Employee Whistleblower Program. This report contains our findings and recommendations as specified in the Work Order.

Thank you for giving Strategica, Inc. the opportunity to conduct this project. I greatly enjoyed working with you and the Whistleblower Program staff. In particular I'd like to recognize the staff of the Whistleblower Protection Program for their assistance during this project.

Please call on Strategica, Inc. again should you need the services of a consultant. If you have any questions or comments, please contact me at (425) 427-5269.

Yours truly,

David Howe

David Howe
President

Executive Summary

Background and Objectives

The Washington State Employee Whistleblower Program was created in law in 1982 to provide a safe harbor for state employees to report improper governmental action. The program is administered by the State Auditor.

The program has a statutory focus on improper governmental action defined as those actions that result in:

- Gross waste of public funds or resources,
- Violation of federal or state law or rule,
- Substantial and specific danger to the public health or safety,
- Gross mismanagement, or
- Preventing the dissemination of scientific opinion or alters technical findings without scientifically valid justification.

RCW 42.40.110 mandates that the program be audited periodically. This is the fourth such audit since 2002 and covers the period between July 1, 2009 and June 30, 2014 with particular focus on FY 2014. This audit was commissioned by the Washington State Office of Financial Management (OFM) and covers four major criteria:

- Compliance,
- Program efficiency,
- Awareness of the program and protecting the identity of whistleblowers, and
- Program effectiveness.

Compliance

We examined 22 Whistleblower case files using a 17-point criteria drawn from statutory requirements and program policies. Common compliance issues included not including required language in notices issued at the beginning of investigations and not sending

notices required after the initial 60-day investigation period. In our opinion, the second issue is due to procedural mandates that do not reflect the practical aspects of the investigations and should be amended in statute. While instances of non-compliance were noted, in our opinion, they did not materially impact the effectiveness of the program. In our opinion the program is in substantial compliance with statutory requirements and policies.

Program Efficiency

The program was fully staffed during the audit scope period. The investigative staff had the necessary qualifications and training and their utilization rate fell within an acceptable range. Efficiency issues we noted include a statutorily required but obsolete process for vetting anonymous assertions during the investigation process. Program staff lack online tools for locating witnesses. Finally, weekly triage meetings are attended by several individuals that do not need to be at every meeting.

Awareness and Protection of Whistleblowers

The Whistleblower Program is marketed at an adequate level by the program staff as shown by the ease of locating the Program website and the diversity of referral sources. Laws and procedures for protecting the identity of whistleblowers could be tightened up. For example, statute currently does not afford confidentiality for cases that are not opened. In addition, Whistleblower Program procedures for handling public record requests are incomplete.

Program Effectiveness

The Program is effective at achieving its mandate of protecting the identity of whistleblowers and investigating improper government actions. We also noted that policies and procedures for ensuring auditor independence and avoiding conflicts of interest are in place and adhered to.

Recommendations

Recommendation 1 - The Legislature should amend RCW 42.40.040(6) and (7) so that investigations are completed within a single 120 day period and references to a preliminary investigation are omitted. The existing statutory language permitting an investigation to

exceed 120 days if the time extension is justified (i.e., RCW 42.40.040(7)) in writing should be retained. A proposed process map is found in Appendix C.

Recommendation 2 - The SAO should amend their boilerplate for preliminary notices (sent at the outset of an investigation during an entrance conference) to include the procedure for subjects to respond to allegations including an opportunity to review and respond to the evidence prior to the completion of investigation.

Recommendation 3 – The SAO should join the State’s Global Address List in MS-Outlook so that State employees can be located if needed for providing information during investigations. In addition, the SAO should subscribe to a commercial people search database such as Locate People or People Finders. The State may have an existing subscription with a preferred vendor that the SAO could also use.

Recommendation 4 – The SAO should limit attendance at the weekly triage meetings to the Deputy Director, Whistleblower Program Manager, Lead Investigator and the Manager of Legal Affairs. Other individuals can be included on an as-needed basis.

Recommendation 5 – The Legislature should amend RCW 42.40.070 to delete references to printed media about the Whistleblower program.

Recommendation 6 – Augment the Whistleblower Program Manual to include additional instructions on public record requests and redactions:

1. Scan the file containing requested record (if not already in pdf). Most records are already in pdf.
2. The first investigator proposes redactions in Adobe Acrobat.
3. The second investigator (a peer) reviews proposed redactions and makes additional proposals if needed.
4. Documents are copied on to a thumb drive and are then transferred to the Public Records Officer (PRO). The thumb drive is then returned to the Whistleblower Program staff.

5. The PRO does a final review of proposed redactions and finalizes. PRO then sends redacted record to the requestor usually via secure file transfer and archives two copies (redacted and with proposed redactions) on their password-protected directory.

Recommendation 7 – Purchase a desktop scanner for use by the Whistleblower Program so referrals do not need to be scanned on a copier that is outside the Program office.

Recommendation 8 – The Legislature should amend State law and provide confidentiality to any current State employee who files a whistleblower complaint with the State Auditor's Office, regardless if an investigation is initiated.

Recommendation 9 – The Whistleblower Program should send out surveys to whistleblowers, subjects and agency contacts at the conclusion of investigations. These surveys should then be retained for the subsequent performance audit.

Objectives and Scope

This audit was commissioned by the Washington State Office of Financial Management (OFM) and is mandated to be performed periodically by RCW 42.40.110. The language of the statute requires:

“The audit shall determine at a minimum: Whether the program is acquiring, protecting, and using its resources such as personnel, property, and space economically and efficiently; the causes of inefficiencies or uneconomical practices; and whether the program has complied with laws and rules on matters of economy and efficiency. The audit shall also at a minimum determine the extent to which the desired results or benefits established by the legislature are being achieved, the effectiveness of the program, and whether the auditor has complied with significant laws and rules applicable to the program.”

The scope of the audit includes all operations of the whistleblower program during the period of July 1, 2009 through June 30, 2014 with particular focus on FY 2014. The resulting scope of whistleblower cases included 18 from FY 2014 and four additional cases from prior fiscal years.¹

¹ Cases from prior to FY 2014 were not included in the findings because of substantial operational changes made to the Program.

Standard Used

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Description of Program

Authority and Scope

The State Whistleblower Program was enacted in statute in 1982 with significant amendments occurring in 2008. It is covered in RCW Chapter 42.40 et seq.

The program is administered by the State Auditor and is intended to provide a safe harbor for state employees to reveal improper governmental actions without fear of reprisals. The program has a statutory focus on improper governmental action defined as those that result in:

- Gross waste of public funds or resources,
- Violation of federal or state law or rule,
- Substantial and specific danger to the public health or safety,
- Gross mismanagement, or
- Preventing the dissemination of scientific opinion or alters technical findings without scientifically valid justification.

Workloads

The program investigates referrals of alleged improper actions from state employees. A Review Committee screens out referrals that fall outside the scope of the program. Cases that clear the Committee are opened and investigated. At the conclusion of the investigation period, assertions are either substantiated by the findings² or unsubstantiated if the findings don't support what was alleged.

² In this context, the word "finding" refers to conclusions arrived at by whistleblower investigators based on the evidence collected that can either substantiate or unsubstantiated an assertion.

The following table shows caseload volumes during the past five fiscal years.

Table 1 – Whistleblower Program Caseload Volumes

Workload type	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Referrals	206	250	257	246	199
Cases opened	55	39	49	37	36

Program Organization

The program is organizationally placed within the Division of State Audit of the State Auditor. The program is managed by the Deputy Director of State Audit and the Whistleblower Program Manager. As of June 30, 2014, the program currently employed a Lead Investigator, two investigators and a Confidential Secretary (performing administrative duties). The Program Manager is dedicated half time to the Program.

Investigation Process

The investigation process begins with the receipt of a referral or complaint. These referrals can be submitted anonymously. Although they are almost always submitted to the SAO, they can be submitted to designated individuals in each state agency. The Whistleblower Review Committee reviews these referrals and rejects those that fall outside the scope of the program's authority. Once accepted, a formal case is opened and an acknowledgement letter is sent to the whistleblower. An investigator then collects information about the allegation and holds an entrance conference with the subject (the person or persons who is alleged to have committed the improper action) and the agency (the agency that employs the subject). The statute specifies two investigatory periods: a 60-day preliminary investigation and a second 60-day period which can be extended if justified. In practice, cases that are closed after a "preliminary investigation" often take more than 60 days. The statute mandates that periodic notices be sent to subjects, agencies and whistleblowers regarding what was alleged, what was found, the status of the investigation. Most investigations are closed out before the 120 days are up and all are completed within a calendar year. The auditor prepares a formal report of findings and if reasonable cause is documented that improper actions occurred, the subject and agency

can prepare a formal response and resolution plan. The SAO annually monitors the resolution and prepares a status report if resolution takes longer than a year.³ Typical outcomes include agencies taking disciplinary action against the subject, such as counseling or suspension, or creating new policies to deal with what happened. A detailed map showing the current investigation process is shown in Appendix B.

³ Of the 18 cases in the FY 2014 sample, none exceeded a year for resolution.

Audit Criteria

The audit objectives stated earlier were further broken down into specific criteria and tests that can be measured in such a way that conclusions are defensible through data collection or direct observation. We categorized audit criteria into four categories:

1. Compliance with rules and policies on timelines, notice and reporting;
2. Operating efficiency;
3. Awareness of the program and ability to protect the identity of whistleblowers; and
4. Program effectiveness.

Compliance criteria were drawn from examining the specific requirements of the authorizing statute (RCW 42.40) and the August 2014 version of the Whistleblower Program Manual. In total, 24 separate criteria were identified and used in the audit. Of these, 17 pertained to compliance.

The Whistleblower statute is an unusually detailed statute containing specific instructions for notifying the various parties involved, timelines that need to be met, the contents of notifications, etc. Typically, such detail is contained in implementing rules such as the Washington Administrative Code (WAC) or agency policies and procedures. The extensively detailed instructions found in the statute translated into a correspondingly detailed audit criteria.

Efficiency criteria focused on program staffing levels, qualifications and utilization. We also looked at the efficiency of the investigation process and applied Lean process improvement techniques.

Program awareness and confidentiality criteria focused on measuring and evaluating ways that the SAO publicizes the existence of the program and the effectiveness of methods used to protect whistleblower identities. Source material for developing criteria came from SAO policies and sections of the RCW addressing protecting identities. We also looked at

quantitative data that would indicate awareness of the program, such as rates of reporting assertions to the SAO.

Program effectiveness focused on the degree that the program achieved legislative goals of identifying and mitigating improper governmental action. We also focused on methods used to report program results and to ensure that staff are free from conflicts of interest and other impairments. Source material for these criteria were drawn from SAO policies and quantitative data that would indicate program effectiveness such as substantiation and case resolution rates.

A full list of the criteria used can be found in Appendix D.

Findings and Recommendations

Compliance

Findings and Discussion

Compliance with statutes and policies was evaluated by comparing information from a statistically valid sample of whistleblower cases against the compliance criteria. Every case from FY 2014 (18 in all) was selected for the audit sample. In addition, one case from the previous four fiscal years was also audited although those findings are not reflected in the results described below because of the management improvements made during FY 2014.

For most cases, documents were stored digitally. Statistical data was maintained in the Program's database. Each case file in Teammate was examined to determine if documentation was present which would indicate that a particular criteria had been met. A spreadsheet was used to collect data from the case files. The spreadsheet collected dates for notices and case processing milestones, identification data for cases and flags which noted whether certain milestones had been achieved or not. The spreadsheet also calculated elapsed time between milestones which corresponded to statutory deadlines for notices and milestones. This data corresponded to the compliance criteria. Theoretically, a case could have as many as 17 non-compliance occurrences or as few as zero.

Based on these statistical results we found that the mean number of non-compliance exceptions per case was 1.1. The highest number of non-compliances in any one case was 5 (observed in one case) with a low of zero (observed in ten cases). The total number of non-compliance occurrences in all cases was 19.

The program is in material compliance with applicable statutes and policies. Most compliance exceptions pertained to missing boilerplate language on preliminary notices and 60-day notices not being sent. Recommendations include combining the two 60-day investigation periods into one 120-day investigation period.

Of the 17 potential non-compliance occurrences that could occur in any one case, 7 were actually observed in the case files. 89% of all the non-compliance exceptions were attributed to the top five criteria.

These top criteria were:

1. All agencies are notified of a preliminary investigation including the nature of the assertion, relevant facts and laws and procedure for responding per RCW 42.40.040(6) – 6 out of 8 possible cases.
2. All subjects are notified of a preliminary investigation including the nature of the assertion, relevant facts and laws and procedure for responding per RCW 42.40.040(6) – 5 out of 8 possible cases.
3. All subject(s) notified with the nature of the assertion, relevant facts and response procedure per RCW 42.40.040(6)(c) if a case warrants a full investigation – 2 out of 7 possible cases.
4. All agencies are notified with the nature of the assertion, relevant facts and response procedure per RCW 42.40.040(6)(c) if a case warrants a full investigation – 2 out of 7 possible cases.
5. All preliminary investigations are completed within 60 working days per RCW 42.40.040(3). In two cases, the preliminary investigations exceeded 60 days (as indicated by the generation of a 60-day notice.)

Another compliance procedure that was performed was to examine notifications that are sent to whistleblowers when an allegation is not accepted (usually because the allegation falls outside the scope of the Whistleblower statute). The mandated deadline for sending out these notifications is 15 working days. 160 referrals fell into this category during FY 2014 and only one notification was late.

Conclusions

Many of the exceptions could have been prevented had the preliminary notices that are sent to agencies and subjects included language describing the procedure for subjects and agencies to respond to allegations. This appears to be an easily-correctable oversight.

Our observations of non-compliance issues showed that many of the issues can be traced to the investigation timelines incorporated into the statute. The statute mandates two separate investigation periods, preliminary and full, with corresponding rules on deadlines and notifications for each. However, in reviewing the actual case files, we observed that investigation activities and events did not usually fall neatly into these mandated investigation periods. Preliminary investigations often took only a few days while the more extensive data collection needed for fully documenting a case took up most of the time. When program staff designated a certain point in time as the end of the preliminary investigation it was often just a point in time triggered by the case management system so that they could send out a notification but had no practical significance for the investigation. Trying to fit real investigation activities into the statutorily-mandated scheme results in extra work, an inefficient regimen of paperwork, and occasional non-compliance occurrences with no real benefit to the program, subjects or agencies.

A more useful and practical timeline would be a single 120-day investigation period with two mandatory notifications: one at the entrance conference or during the initial days of the investigation whereby the agency and whistleblower subject are notified of the existence of an allegation, the procedure that will ensue, expectations and rights for the subject and agency manager, and a description of what was alleged. Often, this event results in additional information being conveyed that shows that an allegation is not true or that the situation has already been resolved. The second notification should occur at the 120 day mark and should either report the findings of the investigation or a notice that the investigation is continuing beyond the 120-day investigation period.

While instances of non-compliance were noted, in our opinion, they did not materially impact the effectiveness of the program. Those non-compliances that occur frequently can be easily rectified though changing the text of preliminary notices or by changing the

statutory definition of an investigation. Our overall assessment of the Whistleblower Program is that the program is in substantial compliance with all relevant laws and policies.

Recommendations

Recommendation 1 - The Legislature should amend RCW 42.40.040(6) and (7) so that investigations are completed within a single 120 day period and references to a preliminary investigation are omitted. The existing statutory language permitting an investigation to exceed 120 days if the time extension is justified (i.e., RCW 42.40.040(7)) in writing should be retained. A proposed process map is found in Appendix C.

Recommendation 2 - The SAO should amend their boilerplate for preliminary notices (sent at the outset of an investigation during an entrance conference) to include the procedure for subjects to respond to allegations including an opportunity to review and respond to the evidence prior to the completion of investigation.

Program Efficiency

Findings and Discussion

The Whistleblower Program was budgeted for 4 positions as of July 1, 2014 and all were filled. During the audit period, staffing levels ranged from four to six. Of these positions, three were investigators and one was an administrative coordinator. The final position was an executive position shared with other programs within the State Audit Division. Note that the program added a fifth position after July 1, 2014 and currently has five positions including three investigators.

Job descriptions for the investigator series require completion of a State-sponsored investigations course and all three investigators have completed the course.

We requested data on staff utilization (percent of time charged to investigative work) from the SAO and the reported figures averaged 67% during the audit scope period which is within an acceptable range for these types of positions.

The investigation process would be more efficient without the use of the anonymous assertions panel. This panel rarely questions staff decisions and perform a function that could be handled internally. Program staff could also benefit from additional resources for locating witnesses.

Anonymous Assertion Panel Review

The Whistleblower investigative process is highly prescribed by RCW 42.40.040 as discussed earlier. In addition to the timeline and noticing requirements mentioned under the compliance section of this report, one other procedural element was examined. RCW 42.40.040(6)(b) requires that all anonymous assertions that are deemed eligible for further investigation are to be reviewed by a three person panel⁴ prior to further investigation. Of the 18 cases audited, three required this review.⁵ Examination of panel review

⁴ The panel includes a State Auditor representative, a citizen volunteer, and a representative of the Attorney General's office.

⁵ Of these three cases, two were in compliance with the requirement for a panel review.

documentation in the case files show that no panel member vetoed conducting further investigation (although there were cases where a panel member did not vote at all). In addition, SAO staff rarely recall any panel member ever voting “no” on a decision to continue an investigation. Pausing the investigation to send out letters to the panel members and waiting for a response adds to the overall investigation timeline and causes delays in resolving cases. In our opinion, the anonymous assertion panel is a redundant and time-consuming process with no benefit to the program.

Online Tools

Investigators frequently need to track down witnesses for interviewing. These witnesses can either be other State employees or members of the public. In either case, investigators sometimes have trouble locating witnesses. Online people search databases are available through a subscription basis which could assist greatly in locating members of the public. Locating other State employees can also be a problem as the State Auditor is not part of the Global Outlook contact directory for Washington State employees.

Whistleblower Review Committee

The staff of the Whistleblower Program hosts a meeting on a weekly basis where new whistleblower referrals are reviewed by a committee and decisions are made whether to proceed with an investigation or to reject the referral (usually for being out of scope of the Whistleblower statute). The Committee is composed of seven people:

1. Deputy Director of State Audit
2. Manager of the Whistleblower Program,
3. Lead Investigator
4. Whistleblower Program Coordinator
5. Forensic Technologist
6. Manager of Legal Affairs
7. SAO Performance Audit Principal Manager

With the exception of the Deputy Director, Whistleblower Program Manager, Lead Investigator and the Legal Affairs Manager, participation by the other individuals could be limited to an exception basis when their special expertise or authority is needed. For most meetings, their participation is not required given the nature of the referrals.

Recommendations

Recommendation 3 – The SAO should join the State’s Global Address List in MS-Outlook so that State employees can be located if needed for providing information during investigations. In addition, the SAO should subscribe to a commercial people search database such as Locate People or People Finders. The State may have an existing subscription with a preferred vendor that the SAO could also use.

Recommendation 4 – The SAO should limit attendance at the weekly Review Committee meetings to the Deputy Director, Whistleblower Program Manager, Lead Investigator and the Legal Affairs Manager. Other individuals can be included on an as-needed basis.

Awareness and Protection of Whistleblowers

Findings and Discussion

In this section of the report we examine efforts of the SAO to ensure that state employees are aware of the Whistleblower Program and that their identities are protected should they avail themselves of the program to report potential improper governmental action. Both of these goals are explicitly mentioned as the statutory intent of the program.⁶

We evaluated awareness of the program several ways:

- Evaluating marketing materials and methods used by SAO,
- Reviewing workload indicators, and
- Evaluating the variety of agency sources for referrals.

Laws and procedures for protecting the identity of whistleblowers could be tightened up. For example, statute currently does not afford confidentiality for individuals submitting referrals on cases that are not opened.

The program was and is marketed mostly through the internet. Though the Whistleblower statute requires distribution of printed media this is no longer done due to budget cuts in prior years. We reviewed the dedicated SAO webpage that describes the program, has a FAQ section, a list of agency contacts⁷ and a link to an e-form for filing a whistleblower complaint. The webpage can be found at:

<https://www.sao.wa.gov/investigations/Pages/Whistleblower.aspx>

The webpage can also be found through a simple search through the Access WA page available by all State employees (and members of the public).

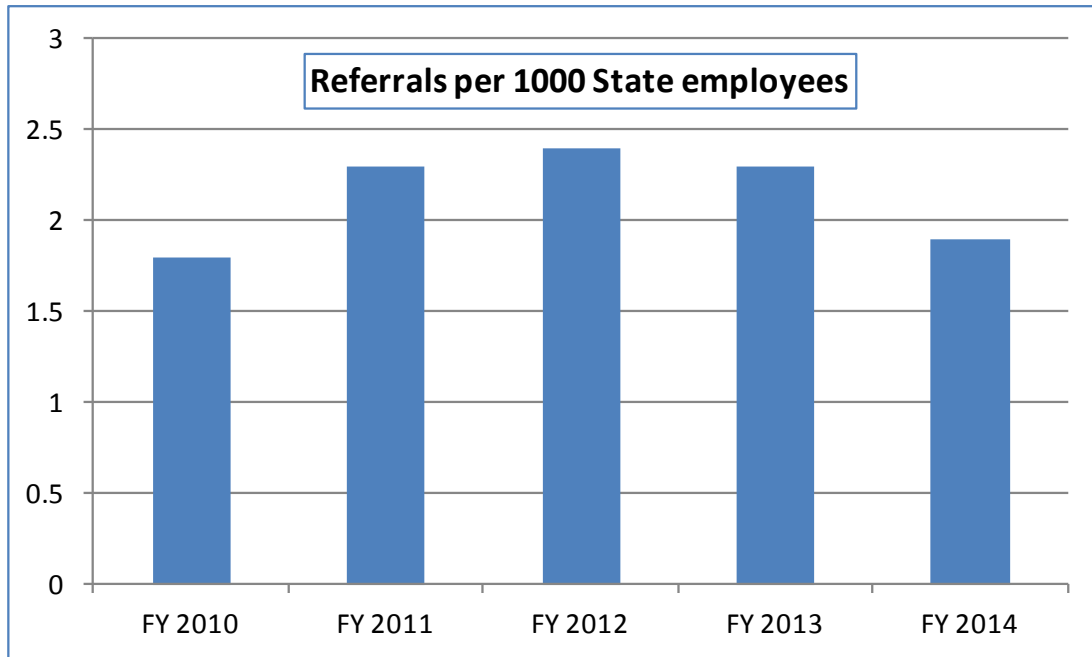
⁶ RCW 42.40.010 states "It is the policy of the Legislature that employees should be encouraged to disclose, to the extent not expressly prohibited by law, improper governmental actions, and it is the intent of the Legislature to protect the rights of the state employees making these disclosures."

⁷ The 2008 legislation created a provision whereby whistleblowers could file complaints with designated individuals in their agencies in lieu of filing the complaint directly with the SAO. In these cases, the complaint is forwarded to SAO by the agency within 15 calendar days. In our audit sample, no referrals were made in this manner.

Measuring the effectiveness of these materials and media is an inexact science but we used two proxy indicators for evaluating program awareness:

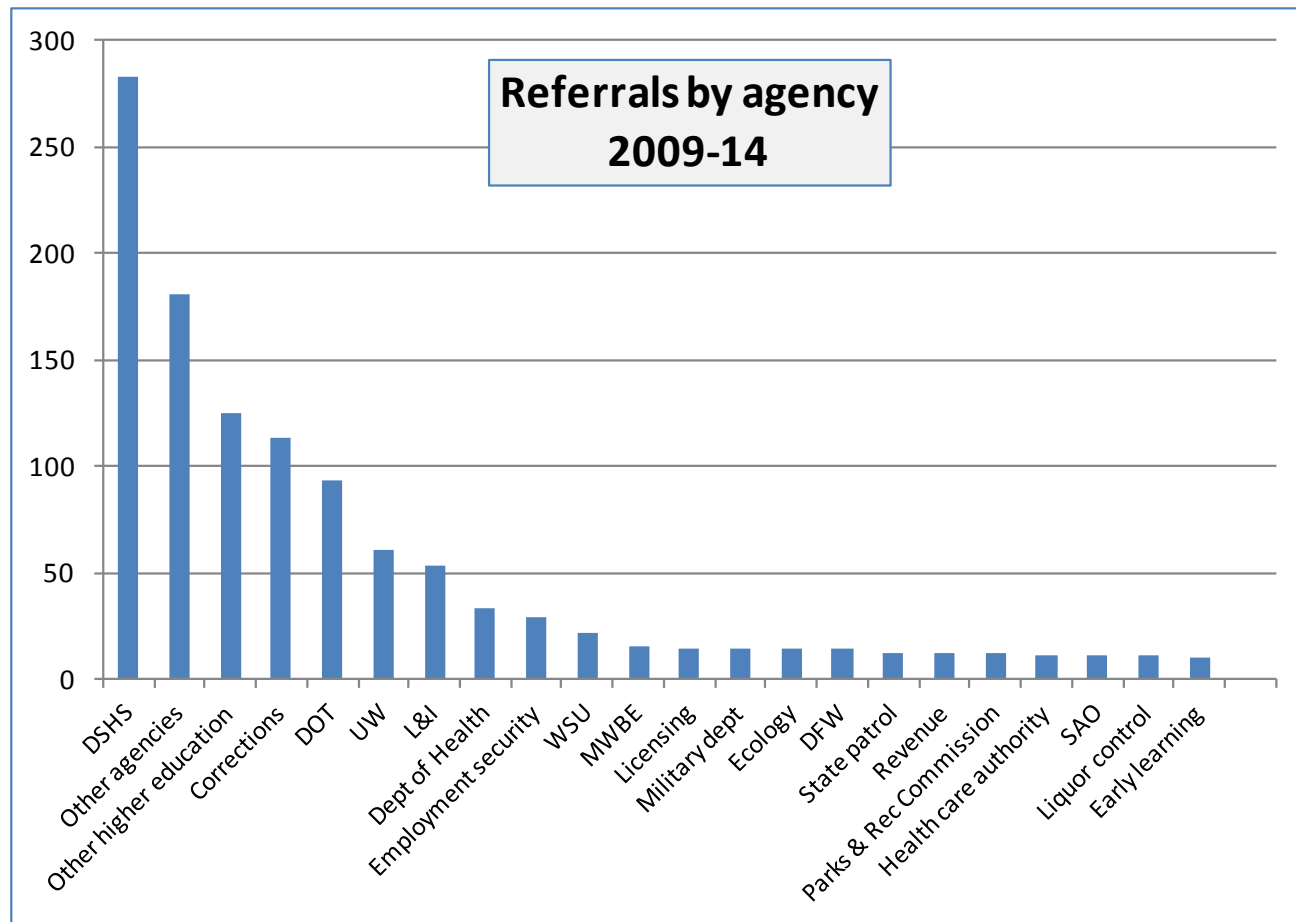
1. Awareness as measured by rate of referrals, and
2. Variety of sources for referrals.

Figure 1 – Whistleblower Referrals



As seen in the chart, the rate of referrals per 1,000 state employees ranged between 1.8 and 2.4. The majority of these referrals were rejected as they were deemed to fall outside the scope of the program.

Figure 2 – Referrals per Source Agency



This chart shows the variety of agencies where referrals originated during the audit period. As seen in the chart, DSHS, Corrections and other higher education (other than UW and WSU) accounted for 45% of all referrals which is in line with the number of employees at those agencies other than Corrections which is over-represented.⁸

Based on the ease of finding the whistleblower webpage and the variety of referral sources it appears that the program is marketed well and that employee awareness meets legislative goals.

⁸ Referrals involving SAO employees are investigated by the Attorney General's office.

Data Security and Confidentiality

The legislative intent of the program is explicit about protecting the rights of whistleblowers and our audit included an examination of policies and procedures for protecting the identity of whistleblowers and securing the case files and data associated with the program.

SAO Administrative Policies & Procedures (AP&P) on data security and access and the Whistleblower Program Manual have extensive policies and procedures for protecting confidential data including the identity of whistleblowers as well as not disclosing any sensitive or confidential information. These policies include elements such as:

- Non-disclosure of confidential or sensitive data,
- Password protection and limiting file access to just program employees,
- Data encryption when sharing data between computers,
- Locking filing cabinets for paper files,
- Minimizing the amount of confidential information that leaves secured areas, and
- Procedures for handling public disclosure requests, and
- Using discretion when discussing cases.

Our observations of Whistleblower practices based on these policies show:

- The Whistleblower Program Policy Manual instructions on handling public record requests and redactions is incomplete.
- Referral forms from whistleblowers are sometimes scanned at a copier outside the Whistleblower program office. This exposes these referral forms (which often contain whistleblower identification) to being lost in the mechanical systems of the copier such as the document feeder.
- RCW 42.40.020 (10)(a)(i) defines a “whistleblower” as one who reports an allegation which “initiates an investigation.” If a case is not opened, then confidentiality is never afforded to the reporting individual.

Recommendations

Recommendation 5 – The Legislature should amend RCW 42.40.070 to delete references to printed media about the Whistleblower program.

Recommendation 6 – Augment the Whistleblower Program manual to include additional instructions on public record requests and redactions:

6. Scan the file containing requested record (if not already in pdf). Most records are already in pdf.
7. The first investigator proposes redactions in Adobe Acrobat.
8. The second investigator (a peer) reviews proposed redactions and makes additional proposals if needed.
9. Documents are copied on to a thumb drive and are then transferred to the Public Records Officer (PRO). The thumb drive is then returned to the Whistleblower Program staff.
10. The PRO does a final review of proposed redactions and finalizes. PRO then sends redacted record to the requestor usually via secure file transfer and archives two copies (redacted and with proposed redactions) on their password-protected directory.

Recommendation 7 – Purchase a desktop scanner for use by the Whistleblower Program so referrals do not need to be scanned on a copier that is outside the Program office.

Recommendation 8 – The Legislature should amend State law and provide confidentiality to any current State employee who files a whistleblower complaint with the State Auditor's Office, regardless if an investigation is initiated.

Program Effectiveness

Findings and Discussion

In this section of the report we examine the effectiveness of the Whistleblower Program in uncovering, resolving and preventing improper governmental actions. Measuring effectiveness in this regard is difficult in that the final resolution of whistleblower cases is the responsibility of the subject agencies, not the SAO. SAO staff do follow up to make sure that resolution plans are filed and do some ongoing monitoring of resolution but they have no enforcement power over the agencies to make sure resolution is achieved. Furthermore, performance data on what is accomplished through these resolution plans is not captured in any systematic or quantifiable way.

The Program is effective at achieving its mandate of protecting the identity of whistleblowers and investigating improper government actions.

Given these limitations, we used two indicators as proxies for measuring program effectiveness: the rate that reasonable cause findings are made (i.e., allegations are substantiated) and the rate the resolution plans are implemented in cases where reasonable cause findings are made. The Program finds reasonable cause for improper governmental action in 24% of cases. During the last fiscal year (FY 2014), the rate was 22% which may indicate that the Review Committee is not screening out enough cases. In other cases, agencies might resolve the issues by the time the Whistleblower Program gets involved. Of the four cases during FY 2014 where reasonable cause was found, resolution plans were filed and implemented in all four. In no case did resolution take longer than a year. Given the limited indicators available, it appears that the Whistleblower Program is effective at identifying and resolving substantiated cases of improper governmental action.

Investigator Independence

An additional area examined was ensuring that investigators are able to operate independently and free from any conflict of interest. Independence and conflict-of-interest requirements are typical of government investigatory programs. The Whistleblower

Program Manual does not cover independence, however SAO Administrative Policies & Procedures (AP&P) does cover independence and conflict of interest standards and procedures. The policy requires that auditors (and investigators) be free from personal and external impairments in appearance and fact. Employees are required to complete and file an Outside Employment/Conflict of Interest Declaration Form upon hire or whenever a change of status occurs. The policy goes further to describe the actions that need to be taken to avoid these impairments such as notifying a supervisor if an impairment exists. The nature of whistleblower investigations do not typically result in situations where an impairment exists but there may be a case where an investigator has a case that involves a potential employer or a personal friend. On an annual basis, Whistleblower Program employees complete an Annual Acknowledgement form attesting that they have read and been trained in the appropriate policies.

Agency Survey

We surveyed individuals at agencies who are responsible for coordinating whistleblower investigations at those agencies to determine their level of satisfaction with the fairness, efficiency and effectiveness of whistleblower investigations. We sent out 17 surveys using an online survey tool and received 7 responses for a 41% response rate. These agency liaisons were satisfied with the fairness and effectiveness of whistleblower investigations with their only concerns being the timeliness of notifications about whistleblower investigations and investigations being completed in a timely manner. This finding is consistent with the case audit which found that notices were not always timely although all investigations were completed within statutory timelines. It was deemed not practical to survey subjects and whistleblowers due to concerns about confidentiality.

Recommendations

Recommendation 9 – The Whistleblower Program should send out surveys to whistleblowers, subjects and agency contacts at the conclusion of investigations. These surveys should then be retained for the subsequent performance audit.

Prior Audits

This report is the fourth performance audit that has been conducted of the Whistleblower Program. This section revisits the recommendations made from the prior report and discusses the level of implementation.

2009 Performance Audit

The 2009 performance audit report had nine recommendations:

Fully implemented:

Recommendation 6 – The SAO should update the program manual to reflect 2008 statutory changes (and potential future changes resulting from this audit).

Recommendation 7 – Incorporate the SAO policies on data security and confidentiality into the Whistleblower Program Manual by reference.

Recommendation 8 – Enhance the Program Manual to include confidentiality procedures for cases that are referred to other agencies for investigation

Six of the nine recommendations from the 2009 performance audit were not implemented or are no longer valid. Two of the six unimplemented recommendations require statutory change, outside the control of the SAO.

Not implemented:

Recommendation 1 - The Legislature should amend RCW 42.40.040(6) and (7) so that the SAO should complete the whistleblower investigation within 120 working days. Repeal any references to a 60-day preliminary investigation or a second 60-day investigation period. The existing statutory language permitting an investigation to exceed 120 days if the time extension is justified (i.e., RCW 42.40.040(7)) in writing should be retained.

Recommendation 2 - The Legislature should amend RCW 42.40.040(6) to require SAO to send notifications to Whistleblower subjects and agency managers within 20 working days of initiating an investigation. Such notification should include the nature of the allegation, what laws are alleged to have been violated, the general procedure that will ensue, and the rights and expectations of the agency and the subject. RCW 42.40.040(6) should be amended to require SAO to send a second notification at the 90-day mark to the Whistleblower, the subject, and the agency notifying them that the investigation will be completed within 30 days. These notifications would replace the existing statutory requirement to send notices (RCW 42.40.040(6) and RCW 42.40.040(6)(c)).

Recommendation 3 - The notification trigger milestones programmed into the whistleblower case management system should be modified to reflect the milestones from Recommendation 2:

- Sending the initial acceptance letter to the whistleblower within 15 working days,
- Sending an initial notification to the subject and agency manager within 20 working days of starting the investigation.
- Sending a reminder notification to the whistleblower, subject and agency manager at the 90-day mark of an investigation.

Recommendations 1 and 2 were not implemented due to the difficulty of enacting any legislative changes to the statute.

No longer valid:

Recommendation 4 – Amend RCW 42.40.040(6)(b) to eliminate the 3-person anonymous assertion panel in favor of a ministerial review on cases closed after an initial investigation period. The ministerial review would be conducted by a senior manager within SAO and would apply to rejected cases, not those approved for further investigation.

Recommendation 5 – To reduce duplication of effort, the SAO and the EEB should implement an inter-agency agreement whereby SAO completes investigations and prepares findings for 42.52 violations for review by the EEB. This would not apply to cases that originate with the EEB. The EEB would have the option to adopt, amend or disregard the Whistleblower findings.

Recommendation 9 – Incorporate the SAO policies on Independence and Ethics into the Whistleblower Program Manual by reference.

Appendices

Appendix A – Procedures Performed

Strategica, Inc. performed the following procedures in the conduct of this performance audit:

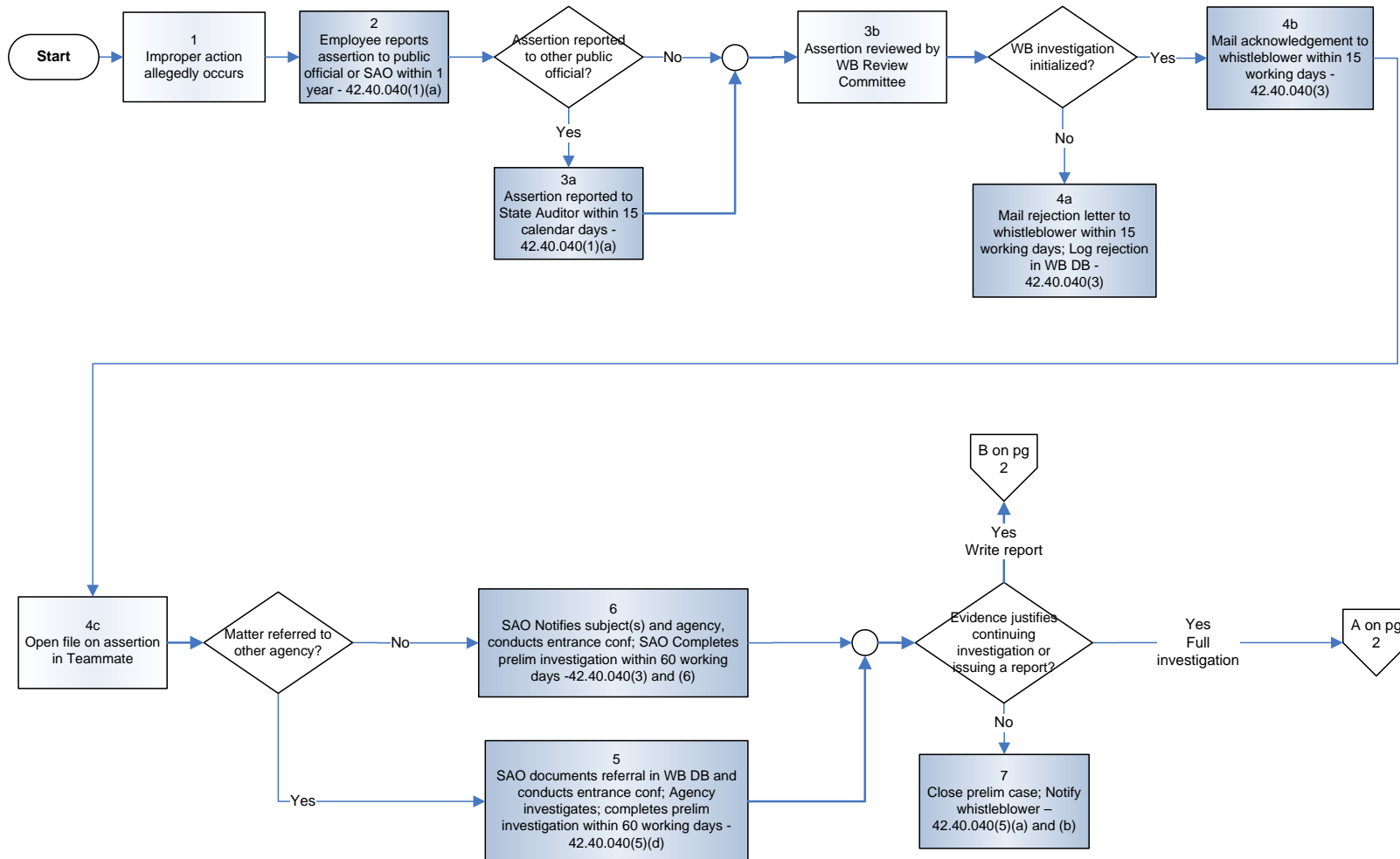
- Conducted an entrance conference with SAO and Whistleblower Program management,
- Interviewed program management,
- Reviewed pertinent laws and policies,
- Mapped the investigation process,
- Established audit criteria,
- Selected audit sample size and cases,
- Reviewed all cases in the sample,
- Reviewed progress on implementing recommendations from prior performance audits,
- Evaluated the Whistleblower investigation process for greater efficiencies using lean techniques,
- Reviewed Whistleblower Program IT systems including case management and document management systems,
- Reviewed all rejected referrals,
- Obtained and analyzed program statistics,
- Evaluated program staffing (e.g., qualifications, staffing levels, turnover, staff utilization),
- Evaluated program performance statistics,
- Evaluated program policies (e.g., staff independence, confidentiality, investigative standards, handling public records requests),

- Evaluated program outreach,
- Surveyed a sample of agency liaisons,
- Presented preliminary findings and recommendations to OFM and Whistleblower program management and staff, and
- Prepared this report.

Appendix B – Current Whistleblower Investigation Process

Whistleblower Program
Whistleblower Process
Page 1 of 2
Created 9/24/14
Modified 12/5/14

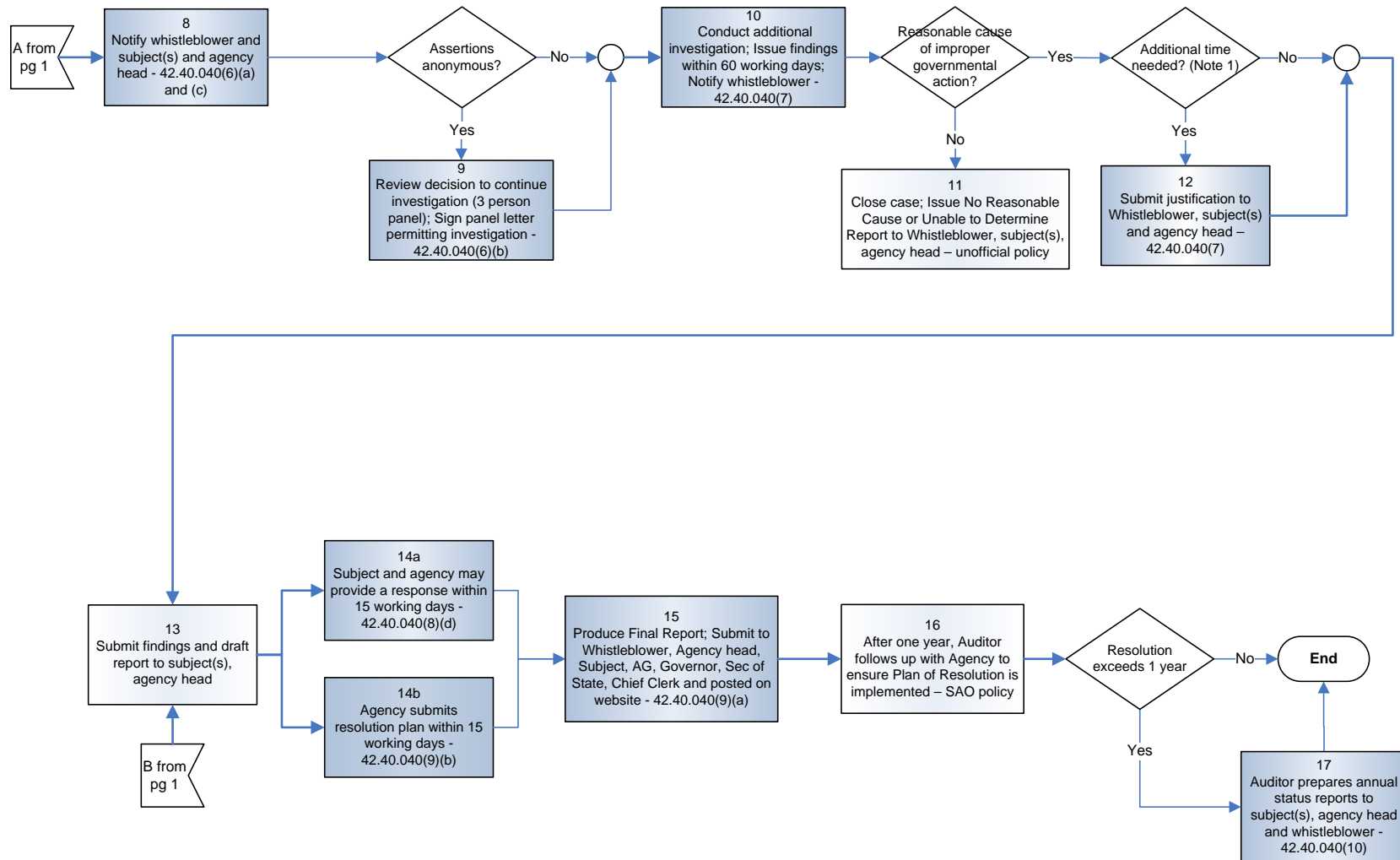
Blue shaded boxes
note statutorily
mandated processes



Whistleblower Program
Whistleblower Process
Page 2 of 2

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note statutorily
mandated processes

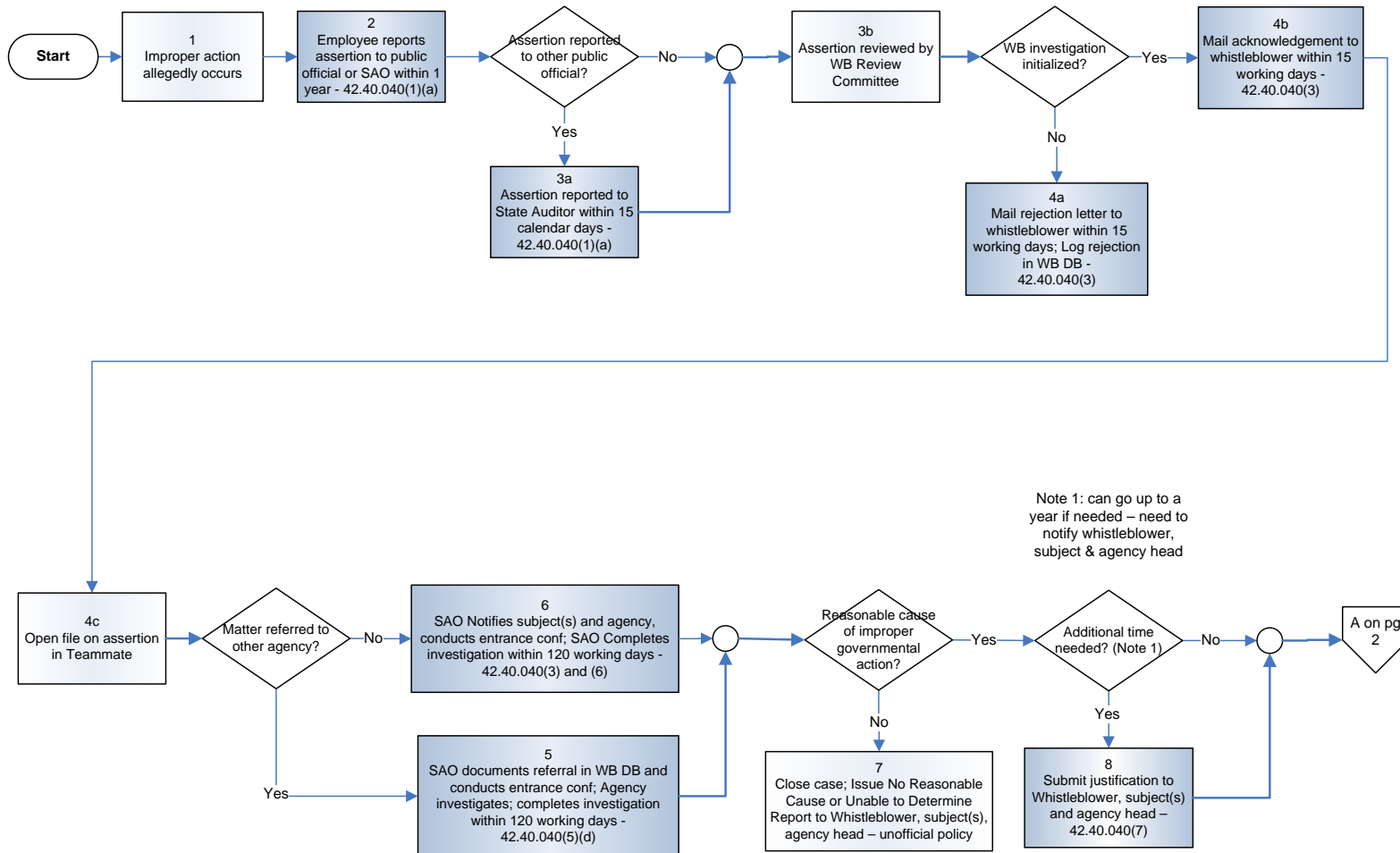
Note 1: can go up to a
year if needed – need to
notify whistleblower,
subject & agency head



Appendix C – Proposed Whistleblower Investigation Process

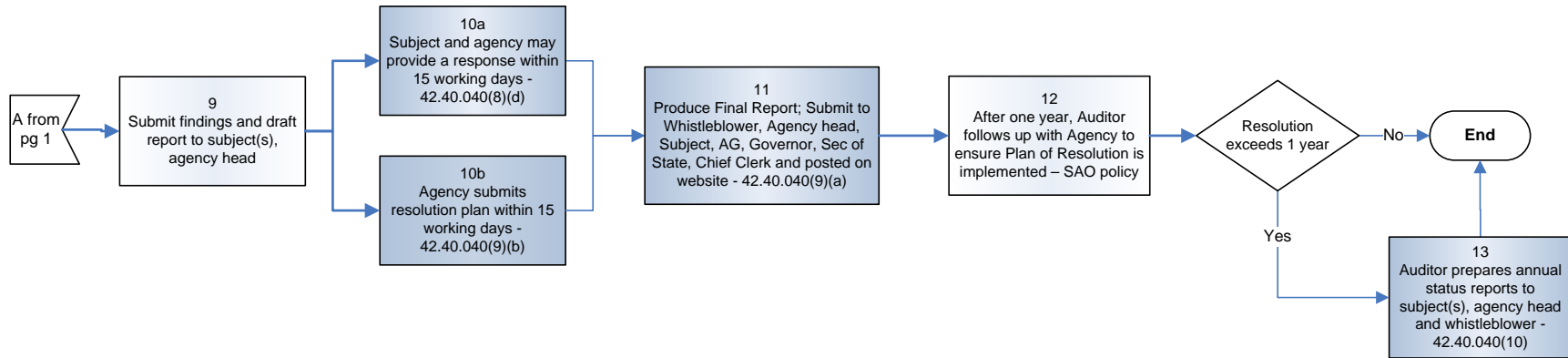
Whistleblower Program
Proposed Whistleblower Process
Page 1 of 2
Created 11/13/14

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note statutorily
mandated processes



Whistleblower Program
Proposed Whistleblower Process
Page 2 of 2

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mandated processes



Appendix D – Audit Criteria

Criteria	Testing Method
Program Goal Evaluated: SAO complies with Rules and Policies on timeliness	
1. Criteria: All assertions initially reported to a State Agency Designee are reported to SAO within 15 calendar days per RCW 42.40.040(1)(a).	Test: # reported within 15 calendar days; # reported after 15 calendar days; Mean reporting days for those in excess of 15 calendar days; factors in late reporting.
2. Criteria: All assertion letters are mailed to whistleblowers within 15 working days stating whether an assertion warrants further investigation per RCW 42.40.040(3).	Test: # mailed within working 15 days; # mailed after 15 working days; # never mailed; Mean mailing days for those in excess of 15 working days; factors in late reporting; Assertion letters state initial decision of SAO.
3. Criteria: All prelim investigations referred to an agency are completed within 60 working days per RCW 42.40.040(5)(d).	Test: # prelim investigations completed within 60 working days; # prelim investigations completed after 60 working days; # never completed; Mean investigation days for those in excess of 60 working days; factors in late completion of investigations.
4. Criteria: All preliminary investigations completed within 60 working days per RCW 42.40.040(3).	Test: # prelim investigations completed within 60 working days; # prelim investigations completed after 60 working days; # never completed; Mean investigation days for those in excess of 60 working days; factors in late completion of investigations.
5. Criteria: All full investigations are completed within 60 working days unless justified in writing per RCW 42.40.040(7).	Test: # findings completed within 60 working days; # findings completed after 60 working days; case file contains written justification if 60 days is exceeded.
6. Criteria: All full investigations are completed within one calendar year from date of referral per RCW 42.40.040(7).	Test: # findings completed within one calendar year; # findings completed after one calendar year; # never completed; Mean investigation days for those in excess

Criteria	Testing Method
	of one calendar year; factors in late completion of investigations.
7. Criteria: All subject and/or agency heads provided 15 working days before issuance of final report to submit a response if notified that improper governmental action has occurred per RCW 42.40.040(8)(d).	Test: # of cases with full 15 working days between notification of improper governmental action and issuance of final report; # cases with fewer than 15 days.
8. Criteria: All agency resolution plans submitted within 15 working days of receiving draft report per RCW 42.40.040(9)(b).	Test: # resolution plans submitted within 15 working days; # resolution plans submitted after 15 working days; # resolution plans never submitted; Mean days for those in excess of 15 working days; factors in late submittal of resolution plans.
Program Goal Evaluated: SAO complies with Rules and Policies on notice and reporting	
9. Criteria: All referrals to agencies for preliminary investigation are documented in the case file with the reason for referring the case per RCW 42.40.040(5)(d).	Test: # case files with documented referral; # case files without documented referral; Documentation includes reason for referring.
10. Criteria: All subjects/agencies are notified of a preliminary investigation including the nature of the assertion, relevant facts and laws and procedure for responding per RCW 42.40.040(6).	Test: # case files with documented notifications; # case files without documented notifications; notifications include required elements.
11. Criteria: Whistleblower notified if case is closed after preliminary investigation including information received and results per RCW 42.40.040(5)(a) and (b)	Test: # case files with documented notifications; # case files without documented notifications; notifications contain required elements.
12. Criteria: All whistleblowers are notified per RCW 42.40.040(6)(a) and subject(s) and agencies are notified with the nature of the assertion, relevant facts and response procedure per RCW 42.40.040(6)(c) if a case warrants a full investigation.	Test: # case files with documented notifications; # case files without documented notifications; notifications contain required elements.

Criteria	Testing Method
13. Criteria: Anonymous Assertion Panel reviews all decisions to continue investigations and signs a Panel Letter documenting concurrence per RCW 42.40.040(6)(b).	Test: # case files with signed panel letter; # case files without signed panel letter.
14. Criteria: All whistleblowers notified of findings when full investigation is completed per RCW 42.40.040(7).	Test: # case files with documented notifications; # case files without documented notifications.
15. Criteria: All final reports submitted to required parties and posted on SAO website per RCW 42.40.040(9)(a).	Test: # case files with documented report submittal and posted on website; # case files without documented report submittal or website posting.
16. Criteria: After final report is issued, SAO follows up with all agencies annually until case is resolved per SAO policy Chapter 6.	Test: # case files with documented follow-up; # case files without documented follow-up.
17. Criteria: Status reports submitted to required parties in all cases where resolution exceeds one year per RCW 42.40.040(10).	Test: # case files with documented report submittal; # case files without documented report submittal; factors in duration of resolution.
Program Goal Evaluated: Program Operates Efficiently	
18. Criteria: Program has adequate staff to perform functions.	Test: All authorized positions are filled; Staff qualifications and experience are consistent with job descriptions and program needs; Overtime utilization is reasonable; Investigators are certified by State per SAO policy Chapter 2..
19. Criteria: Program resources are used efficiently per RCW 42.40.110.	Test: Percent of investigator hours fully utilized in investigations based on timekeeping records.
Program Goal Evaluated: Employees are encouraged to Participate and Rights are Protected	
20. Criteria: State employees are sufficiently aware of the whistleblower program to easily use it and are encouraged to use it per RCW 42.40.010, RCW 42.40.070 and SAO	Test: Sufficient percentage of program awareness based on random, anonymous survey of whistleblowers; Sufficient investment in publicizing the program (e.g.,

Criteria	Testing Method
policy Chapter 1.	web pages, posters, annual notices, list of designees); Trend in assertions per 1000 state employees; Variety of agency sources of assertions.
21. Criteria: Program policies provide sufficient assurance that whistleblower identities and records are kept confidential per RCW 42.40.040(2).	Test: Program policies and procedures exist protecting confidential records; Evidence that program staff possess and are familiar with policies and procedures; case files and data files are secure and only available to program staff. Survey of whistleblowers; # of 42.40.050 referrals.
Program Goal Evaluated: Program is Effective at Preventing and Mitigating Improper Governmental Action	
22. Criteria: Program policies and procedures exist ensuring that program staff have sufficient independence in conducting investigations per RCW 42.40.030.	Test: Program policies and procedures exist that prevent conflict of interest, ensure adequate managerial support, procedures for addressing undue pressure from subjects and agencies, procedures for obtaining necessary documents through subpoena powers.
23. Criteria: Program results are reported accurately and in a timely manner.	Test: Existence of performance measures that are linked to strategic and legislative goals, frequently and accurately reported, and include a range of measurements such as outcomes, efficiency, cost, ease of use, etc.
24. Program is effective at identifying and mitigating improper governmental action per RCW 42.40.110.	Test: Trend in substantiations per cases opened; Trend in cases successfully resolved per cases substantiated; Trend in costs recovered; Survey results of subject agencies.



**Washington State Auditor
Troy Kelley**

January 26, 2015

Wendy Jarrett
Assistant Director Statewide Accounting
Office of Financial Management
PO Box 43113
Olympia WA 98504-3113

Dear Ms. Jarrett:

We appreciate the opportunity to respond to Strategica's performance audit report, dated January 16, 2015, on the state employee whistleblower program.

Many of the audit's recommendations would require the Legislature to change parts of state law. We will continue to conduct our investigations in compliance with existing statutory requirements.

We will review and consider implementing Strategica's other recommendations. Our Office is always willing to make our processes more efficient and outcomes more effective for the citizens of Washington.

Sincerely,

A handwritten signature in black ink that reads "Jan M. Jutte".

Jan Jutte, CPA
Deputy Director of State Audit

JJ:mje