



King County

Whistleblower Protection Program

King County Ombudsman's Office

Whistleblower Protection Program Annual Report
January 1 to December 31, 2011

March 31, 2012

Background

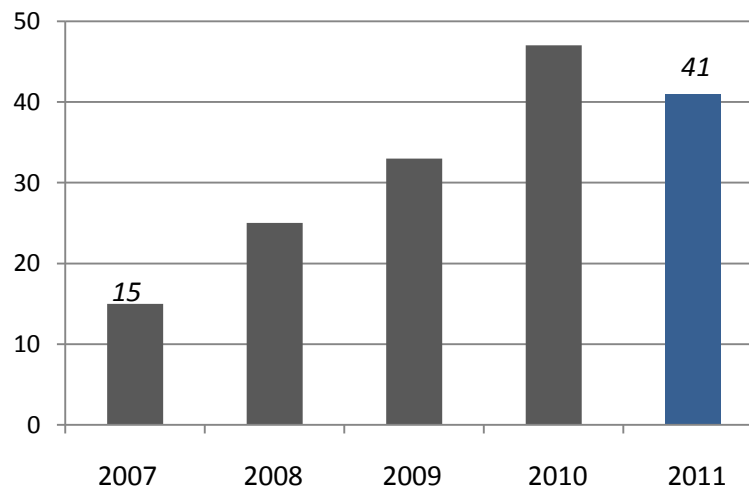
In 2009, the King County Council significantly strengthened the county's whistleblower protections, when it amended the Whistleblower Protection Code, KCC 3.42. These changes broadened the rights of county employees to report illegal conduct, major wrongdoing, and retaliation. The Ombudsman's Office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

Whistleblowers & the Public Trust

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

Our 2011 Whistleblower Protection Program Annual Report shows a slight decrease in the number of employee whistleblower inquiries and complaints received by the Ombudsman's Office. We expected these results as King County's budget stabilizes following several years of major cuts including layoffs. As King County government continues adjusting to the need to provide vital services with fewer resources, we expect that employee whistleblower protections will continue to be an important component for building and maintaining public trust in county government.

Whistleblower Cases 2007-2011



2011 Whistleblower Case Activity

The table below lists whistleblower and whistleblower retaliation cases processed by the Ombudsman's Office in 2011. Departments not listed in the table did not have any whistleblower cases during 2011.

Department	Carried Forward into 2011	Cases Opened in 2011	Cases Closed in 2011	Carried Forward into 2012
Adult & Juvenile Detention	0	6	4	2
Community & Human Service	0	3	3	0
Development & Environmental Services	0	2	2	0
District Court	0	1	1	0
Executive Services	2	7	7	2
The Executive	0	1	0	1
Natural Resources & Parks	0	2	2	0
Ombudsman ¹	0	1	1	0
Public Health	0	1	1	0
Sheriff's Office	0	1	1	0
Transportation ²	2	8	12	1
Non-Jurisdictional	0	1	1	0
Total	7	34	35	6

2011 Whistleblower Complaints by Type

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

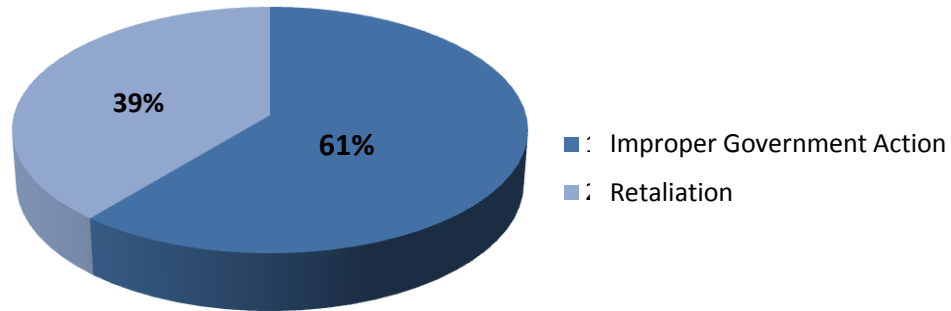
- illegal conduct;
- abuse of authority;
- gross mismanagement;
- substantial and specific danger to public health or safety;
- gross waste of funds; or,
- silencing scientific or technical findings.

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

¹ The case attributed to the Ombudsman's Office was a request for public records related to a whistleblower investigation.

² The Department of Transportation (DOT) reported processing three employee whistleblower complaints that were not filed with the Ombudsman. In one case, an employee was terminated and four received suspensions after an investigation showed that one requested and received unauthorized prescription pain medication from another. In a separate case, an employee alleged exchanges of prescription drugs by employees, but the allegation could not be substantiated. In the third case, an employee alleged improper governmental action; an outside investigator found no wrongdoing but noted opportunities for more transparency and effectiveness, which DOT is currently studying. No other county agencies reported processing their own whistleblower complaints in 2011.

Whistleblower Complaints by Type

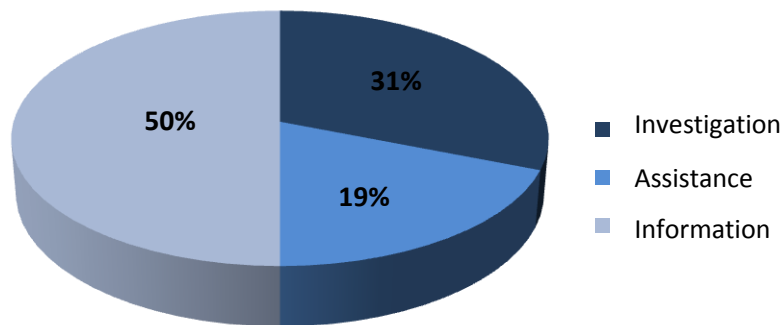


Action on Complaints

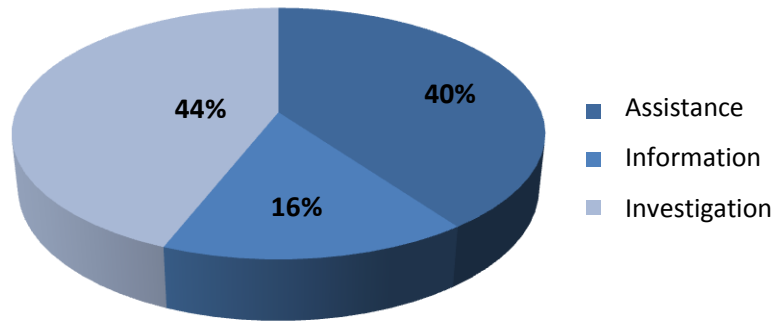
In 2011, the Ombudsman’s Office received a total of 34 contacts from employees considering a report of improper governmental action or retaliation, in addition to cases carried forward and closed in 2011. These contacts resulted in one of three classifications:

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

Improper Governmental Action Complaints for 2011



Retaliation Complaints for 2011



Summarized Details of Select 2011 Cases

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

Complaint	Resolution
Alleged gross mismanagement within Department of Development & Environmental Services.	Two county employees confidentially contacted the Ombudsman's Office, and presented serious concerns about the direction and management of a high-profile and time-sensitive project. Following extensive intake interviews and reviews of documentation, we arranged and facilitated a meeting between one of the employees and the department director. The employees later reported that DDES was taking positive steps to resolve the concerns and requested that we discontinue the investigation. The evidence of gross mismanagement was insufficient to justify further investigation.
Alleged retaliation for previous whistleblower reports and related actions in Department of Transportation.	Two transportation planners filed four separate complaints alleging 18 counts of retaliation for their previous whistleblower reports about computerized traffic models. We analyzed hundreds of pages of documentation and interviewed 13 witnesses. In three separate reports, we found that changes to complainants' employment resulted from strategic shifts in resources prompted by declining revenues. Other allegations, including denial of a reclassification request, a delayed performance appraisal appeal process, and an alleged campaign of hostile treatment by a supervisor, resulted from a combination of genuine misunderstandings and non-retaliatory business decisions. The evidence was insufficient to support findings that DOT's actions were because of the employees' previous whistleblower reports. The employees did not appeal our findings.

<p>Alleged gross mismanagement, bullying, and other inappropriate workplace behavior in Department of Community & Human Services.</p>	<p>Three employees confidentially met with Ombudsman staff concerning long-standing workplace problems possibly involving whistleblower issues. We educated the employees about their formal and informal options, and the paths to possible resolution within each option, including Ombudsman communication with senior department officials and increased involvement by the county Alternative Dispute Resolution Program. We coached and counseled employees about their approach to the workplace going forward.</p>
<p>Alleged retaliation for reporting alleged misconduct by high-ranking co-worker in Department of Adult & Juvenile Detention.</p>	<p>Employee reported that higher-ranking co-worker mishandled an inmate visitation request. Employee then perceived hostile treatment by co-worker, including derogatory tone in an email copied to others, verbal hostility, and aggressive staring. After interviewing witnesses and reviewing relevant documentation, we found insufficient evidence of a causal link between the employee's whistleblower report and the co-worker's actions. Further, the co-worker's actions did not rise to the level of a hostile manner of treatment, and thus were not "adverse employment action" under the Whistleblower Protection Code.</p>
<p>Alleged retaliation for reporting perceived gross mismanagement and waste of funds, abuse of authority, and legal violations in Department of Executive Services.</p>	<p>Following months-long intake, coaching and counseling about options, employee alleged that because of her whistleblower reports, managers retaliated, including: changing work hours, job duties and title; poor performance review; blocked email access during maternity leave, and proposed layoff. Ombudsman staff offered and participated in confidential mediation which did not result in settlement. Other Ombudsman staff then independently analyzed hundreds of pages of documentation and interviewed 19 witnesses. Based on a thorough investigation, we produced detailed findings: employee likely engaged in protected activity but evidence was insufficient to support retaliation findings. Employee appealed to the state Office of Administrative Hearings, which affirmed our decision.</p>
<p>Alleged retaliatory layoff for reporting that employees were using an unpermitted trailer at Department of Natural Resources & Parks facility.</p>	<p>Employee alleged that six managers retaliated against him following his whistleblower report, by misapplying union bumping rights and giving him a layoff notice in error. We reviewed all relevant documentation and interviewed ten witnesses. Based on extensive analysis of the evidence, we found that DNRP's errors in interpreting bumping rights and sending the resulting layoff notice were not made because of employee's whistleblowing, and DNRP officials had no retaliatory motive.</p>
<p>Alleged inappropriate workplace communications and interpersonal issues, constituting whistleblower reports and retaliatory action in Public Health—Seattle & King County.</p>	<p>Extensively counseled employee regarding formal and informal avenues for addressing workplace issues. Employee chose option of working to resolve issues on his own, with Ombudsman available for further involvement if necessary. Employee ultimately reported achieving a satisfactory result in handling his own issues, and case was closed with no formal investigation or findings.</p>

Ombudsman Resource Issues

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

While whistleblower cases continue to comprise a small percentage of the nearly 3,000 inquiries the Ombudsman's Office handles each year, over half of the whistleblower cases that come to our office are now retaliation cases. Adding retaliation cases to the Ombudsman's portfolio has required a strategic shift in resources to handle these cases. Retaliation cases are high stakes both for reporting employees and for the County, since whistleblower allegations involve matters that could significantly and substantially threaten public health or safety, taxpayers' dollars, or even the mission of the agencies involved. These cases are also very time-intensive, typically requiring a large number of investigator hours. Ombudsman staff conducted 489 interviews, meetings or phone calls, and sent or received 539 letters or emails, handling whistleblower cases in 2011. We will continue to monitor the impact on the office's workload.

Employee Feedback

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

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