



King County

Whistleblower Protection Program

King County Ombudsman's Office

Whistleblower Protection Program Annual Report
January 1 to December 31, 2012

March 31, 2013

Background

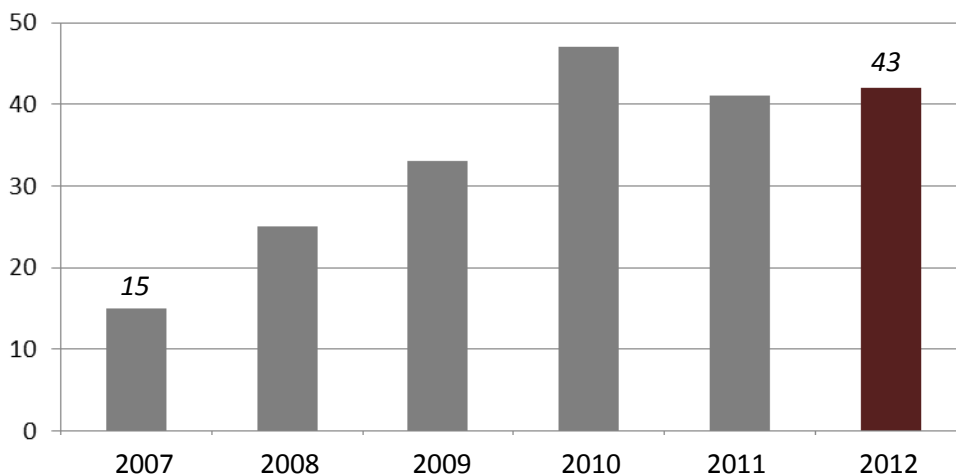
The Ombudsman's Office is the primary recipient of whistleblower complaints from King County employees (KCC 3.42). We focus on helping employees determine whether their concerns can be resolved informally, or whether an investigation resulting in formal findings is warranted. We investigate allegations of wrongdoing and may issue findings based on investigations, require action plans, and fine departments in egregious cases. We also lead 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 it, so that problems can be identified and fixed, and county government 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 wrongdoing demonstrate the County's commitment to supporting an 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 2012 Whistleblower Protection Program Annual Report shows a slight increase in the number of whistleblower inquiries and complaints received by the Ombudsman's Office. These results are consistent with our expectations 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 more efficiently and 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 2007-2012



2012 Whistleblower Cases by Department

The table below lists whistleblower and whistleblower retaliation cases processed by the Ombudsman's Office in 2012. Departments not listed in the table had no Ombudsman whistleblower cases during 2012.

Department	Carried Forward into 2012	Cases Opened in 2012	Cases Closed in 2012	Carried Forward into 2013
Adult & Juvenile Detention	1	12	6	6
Community & Human Service	0	2	0	2
District Court	0	1	1	0
Elections	0	1	0	1
Executive Services	2	1	4	0
Natural Resources & Parks	1	8	6	1
Ombudsman	1 ¹	10 ²	12 ³	0
Prosecuting Attorney's Office	0	3	2	0
Public Health	1	0	1	0
Sheriff's Office	1	1	2	0
Transportation	1	3	4	0
Non-Jurisdictional	0	1	1	0
Total	8	43	39	10

King County employees also may opt to file whistleblower complaints directly with their departments. Since 2010, departments report the results of those cases to the Ombudsman. The reporting methodologies among departments has not been standardized to date. This is due to various factors including internal tracking systems that pre-date the reporting requirement, and the practice in some collective bargaining units of filing whistleblower and retaliation complaints as labor grievances, which are excluded from the jurisdiction of the whistleblower code. In the next year, we will work with departments to better standardize how whistleblower complaints are counted and tracked. For 2012, only two departments reported receiving whistleblower complaints that had not been processed by the Ombudsman's Office.⁴

¹ The case was an appeal of an Ombudsman finding that no retaliation had occurred. The appeal was heard and upheld by the Washington State Office of Administrative Hearings.

² All ten cases were requests for public records and other information regarding whistleblower and retaliation cases. Some of these requests required substantial amounts of time and resources to fulfill.

³ Two of the twelve cases were appeals of an Ombudsman finding that no retaliation had occurred. The appeals was heard and upheld by the Washington State Office of Administrative Hearings.

⁴ The Department of Executive Services (DES) received a mismanagement and illegal procurement allegation, but the reporting employee refused to meet with the outside investigator hired by DES, and did not provide sufficient details to warrant further investigation. The Department of Adult and Juvenile Detention (DAJD) investigated and sustained two whistleblower complaints. One involved an officer who watched inappropriate video clips on duty, and allowed unsupervised inmates to deliver and retrieve meal trays from a gender-integrated infirmary. The other involved a supervisor who retaliated against an officer by changing her primary duty position. DAJD also reported three pending whistleblower cases.

2012 Whistleblower Inquiries and Complaints by Type

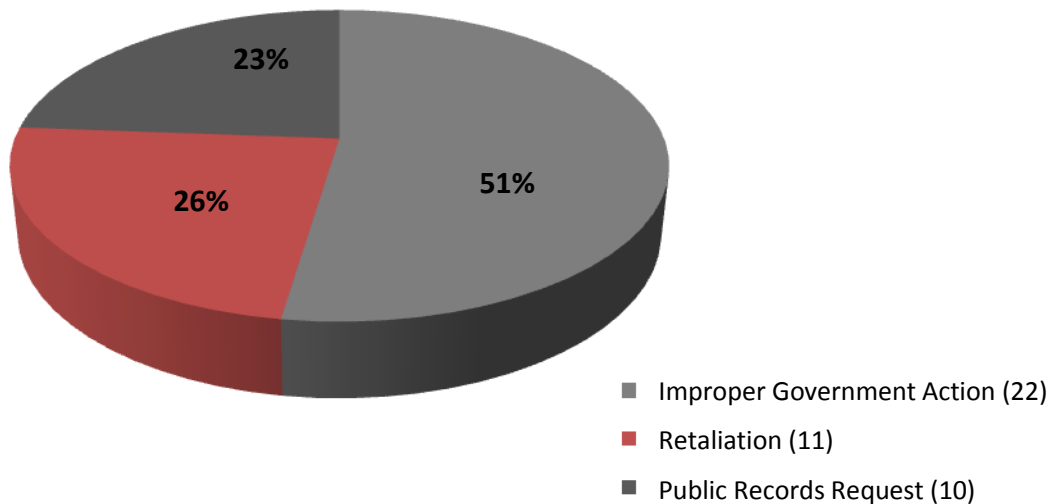
The whistleblower code encourages county employees to report what they believe to be illegal or serious wrongdoing, called “***improper governmental action***”. This generally means:

- 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.

Our office also handles ***public records requests*** for whistleblower and retaliation cases.

Whistleblower Contacts by Type for 2012

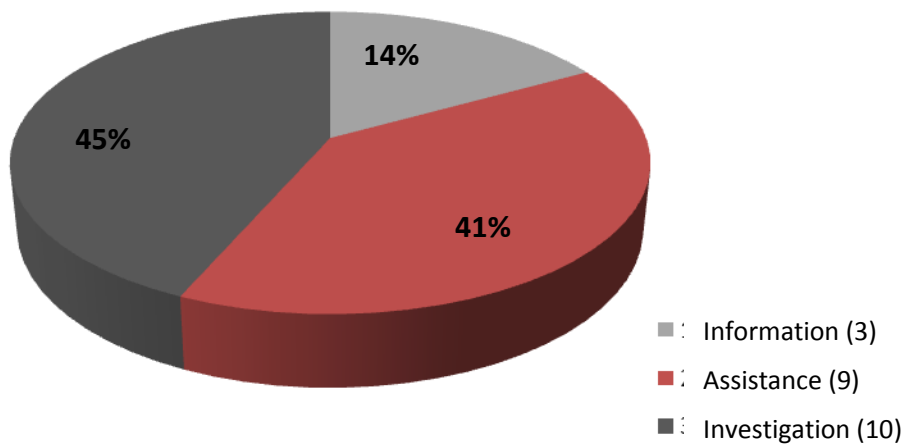


Action on Complaints

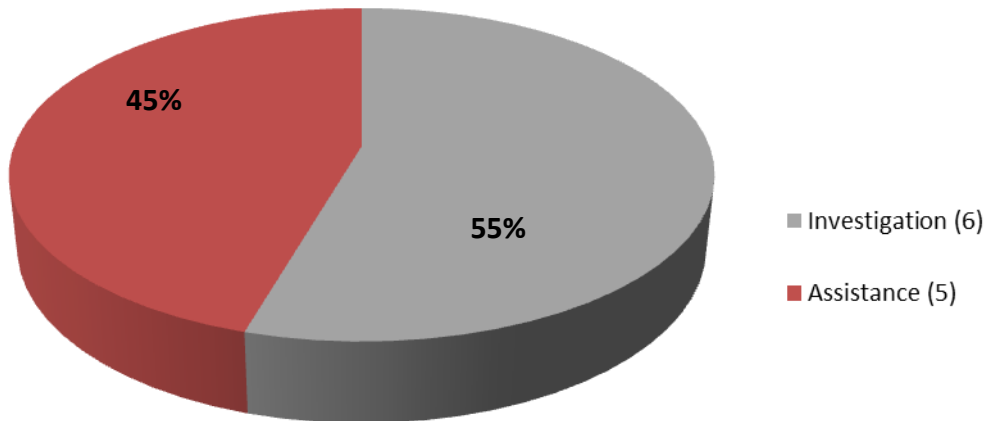
In 2012, the Ombudsman's Office received a total of 43 contacts concerning whistleblower and retaliation matters, in addition to cases carried forward and closed in 2011. These contacts resulted in one of three classifications:

- 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.

**Resolution of Improper Governmental Action
Complaints for 2012**



Resolution of Retaliation Complaints for 2012



One retaliation complaint, charted within the “Assistance” category above, was mediated to a settlement with the participation of the Ombudsman’s Office.

Summarized Details of Select 2012 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 unsafe, unfair, and illegal practices in King County Parks Division.	Former Parks employees believed they were “blackballed” from future county employment due to their prior disclosures, and submitted a 16-page complaint detailing their allegations. Ombudsman staff reviewed the complaint, relevant law, the department’s investigation, and information obtained in interviews. Based on our review, we determined there was no basis for further investigation by the Ombudsman, but referred several of the issues to the Parks Division for review. We provided the former employees and the Parks Division with a detailed, written explanation of our decision.
Alleged retaliation after alleging safety violations within the Transit Division.	A transit employee in a safety-sensitive job classification alleged retaliation after alleging several violations. Ombudsman staff conducted a preliminary investigation that included gathering and analyzing records and statements from both the complainant and the department. Ombudsman staff recognized the potential for a negotiated resolution. Confidential mediation was convened and mediated by the Inter-Local Conflict Resolution Group with Ombudsman staff participation and expertise, resulting in an agreement including withdrawal of the retaliation complaint and procedures for addressing future workplace issues.

<p>A County Councilmember forwarded the Ombudsman an anonymous letter alleging that the contractors who operate the summer concerts at Marymoor Park were being improperly replaced by the Parks Division within the Department of Natural Resources and Parks (DNRP).</p>	<p>The Ombudsman's Office reviewed relevant records and interviewed procurement experts as well as county officials associated with the park. We determined that the county had afforded the previous contractors opportunities to continue their contracts. The county also appropriately negotiated with a new contractor to maximize revenue for the county. Contrary to the allegations in the anonymous letter, we found no reason to believe that DNRP acted improperly or unfairly toward the previous contractors.</p>
<p>Alleged mishandling of employee litigation paperwork, in violation of attorney-client privilege, within the Department of Adult and Juvenile Detention.</p>	<p>A DAJD employee alleged that co-workers who found litigation documents in a county parking lot had violated laws and rules by forwarding the paperwork to supervisors. After reviewing internal records of the incident, Ombudsman staff determined the employees who found the documents were attempting to return them to their rightful owner and had acted in good faith. Neither the employee who owned the documents nor the owner's attorney objected to the manner in which the matter was handled. Ombudsman staff provided a detailed explanation of the decision to the complaining employee.</p>
<p>Alleged employees drank alcohol while on duty, drove county vehicles after drinking, and received alcohol deliveries at work within the Department of Transportation.</p>	<p>In response to the complaint, Ombudsman staff reviewed laws and policies regarding alcohol use, including public safety considerations due to possible involvement of safety sensitive positions. Ombudsman staff searched relevant computer data, reviewed the department's internal investigation, and conducted interviews to resolve outstanding questions. Ombudsman staff found insufficient evidence to prove allegations except that alcohol found on-site was being delivered to the job site. The Ombudsman determined that management appropriately handled that issue.</p>
<p>Alleged that employee was terminated after alleging wrongdoing within the Regional Animal Services Division.</p>	<p>Ombudsman staff thoroughly investigated the allegation and found insufficient evidence that the termination was retaliatory. Rather, we found that the Regional Animal Services Division terminated the complainant's probationary employment for legitimate business reasons that were unrelated to the employee's prior allegation of improper governmental action.</p>

<p>Alleged that employee was terminated after alleging wrongdoing within the Department of Executive Services.</p>	<p>Former employee alleged her termination was retaliation for meeting with the Ombudsman's Office and filing an ethics complaint about her supervisor. Following a thorough investigation, the Ombudsman found the former employee engaged in protected activity but the termination decision, and King County's conduct during a state unemployment hearing, were not retaliatory.</p>
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Ombudsman Resource Issues

The 2009 whistleblower code amendments vested 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 more than 2,000 inquiries the Ombudsman's Office handles each year, more than half of the employee 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, and whistleblower allegations involve matters that could significantly and substantially threaten public health or safety, taxpayers' dollars, or even the mission of the agencies involved. These cases are also very time-intensive, typically requiring a large number of investigator hours. We will continue to monitor the impact on the office's workload.

Additionally, in 2012, we experienced a sharp rise in the number of public records requests for case files dealing with whistleblower and retaliation issues we have handled. As many of those cases have large documentary records, including sensitive documents that must be withheld under state law, responding quickly and fully to these requests takes a significant portion of staff time.

Employee Feedback

King County offers meaningful whistleblower protections that are strong compared with similar laws nationally. The scope of these protections can nevertheless be misunderstood in certain situations, and we work hard to educate complainants and departments 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 their concerns, and counseling and coaching regarding their particular situations.