



King County

Whistleblower Protection Program

King County Ombudsman's Office

Whistleblower Protection Program Annual Report
January 1 to December 31, 2015

March 31, 2015

Background

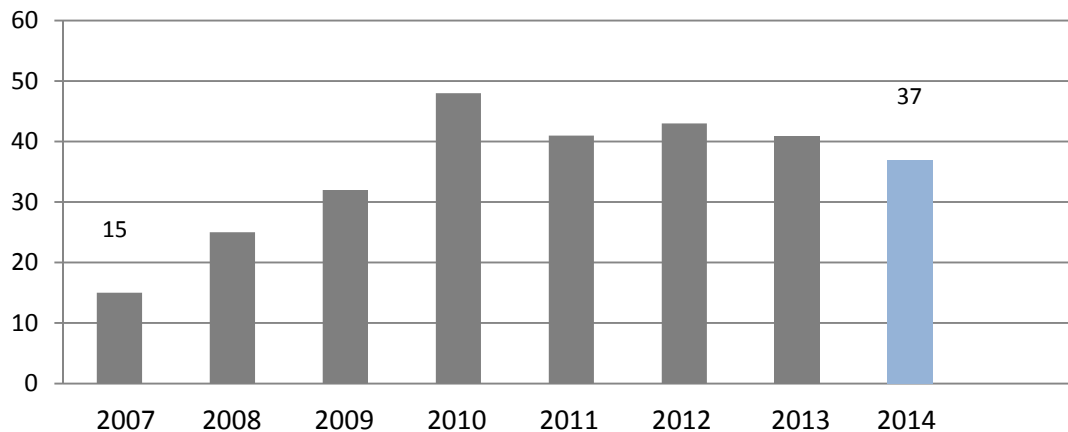
The Ombudsman's Office is the primary recipient of whistleblower complaints from King County employees (KCC 3.42). We focus on helping employees determine whether their concerns can be resolved informally, or whether an investigation resulting in formal findings is warranted. We investigate allegations of wrongdoing and may issue findings based on investigations. 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 whistleblower protections demonstrate King 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 2014 Whistleblower Protection Program Annual Report shows that slightly fewer whistleblower issues were received by the Ombudsman's Office than in the recent past, though no reliable trend is detectable since the number of issues received has remained above 30 since 2009. The 2014 results are consistent with expectations as King County's budget continues to stabilize following several years of major cuts including layoffs. As King County government continues adjusting to the need to provide vital services more efficiently, we expect that employee whistleblower protections will continue to be important for building and maintaining employee confidence, and public trust in county government.

Whistleblower Cases 2007-2014



2014 Whistleblower Cases by Department

The table below lists whistleblower and whistleblower retaliation cases processed by the Ombudsman's Office in 2014. Departments not listed in the table had no Ombudsman whistleblower cases during 2014.

Department	Carried Forward into 2014	Cases Opened in 2014	Cases Closed in 2014	Carried Forward into 2015
Adult & Juvenile Detention	2	0	2	0
Assessments	0	1	1	0
Community & Human Service	2	1	3	0
County Council	0	1	1	0
Executive Services	2	3	4	1
Natural Resources & Parks	0	0	0	0
Ombudsman ¹	1	5	5	0
Public Health	1	4	5	1
Transportation	0	14	8	4
Sheriff's Office	0	6	5	0
Non-Jurisdictional	0	2	2	0
Total	8	37	36	6

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. During 2014, we began to standardize reporting methodologies among departments, and provided a guidance document toward that end. For 2014, the Department of Adult and Juvenile Detention reported receiving one whistleblower complaint that had not been processed by the Ombudsman's Office. The report alleged an unspecified instance of unfair treatment, and the department's investigation did not result in a determination.

¹ These cases involved public records requests of complainant's case files, Ombudsman managerial reviews of the office's casework at the request of complainants, or further administrative action such as appeals of Ombudsman findings to the Washington State Office of Administrative Hearings as provided by KCC 3.42.060(J).

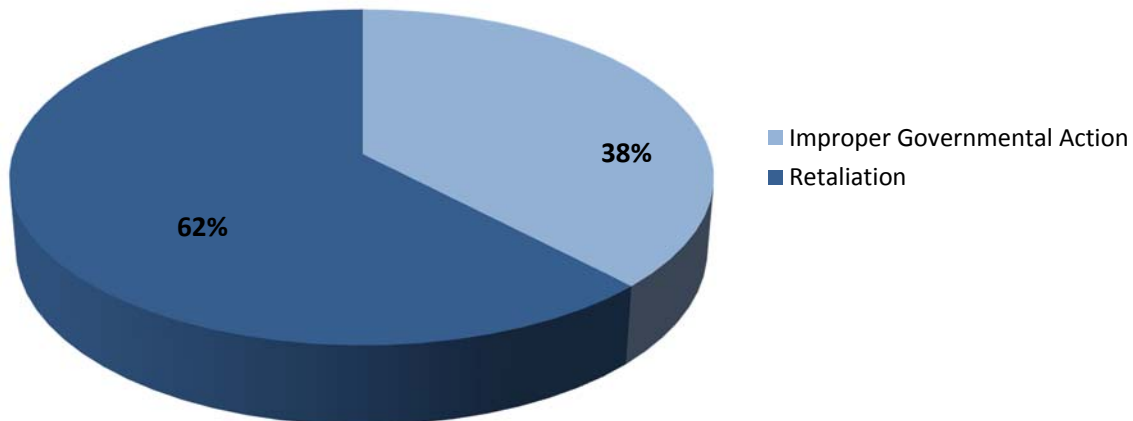
2014 Whistleblower Inquiries and Complaints by Type

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.

Whistleblower Contacts by Type for 2014



Action on Complaints

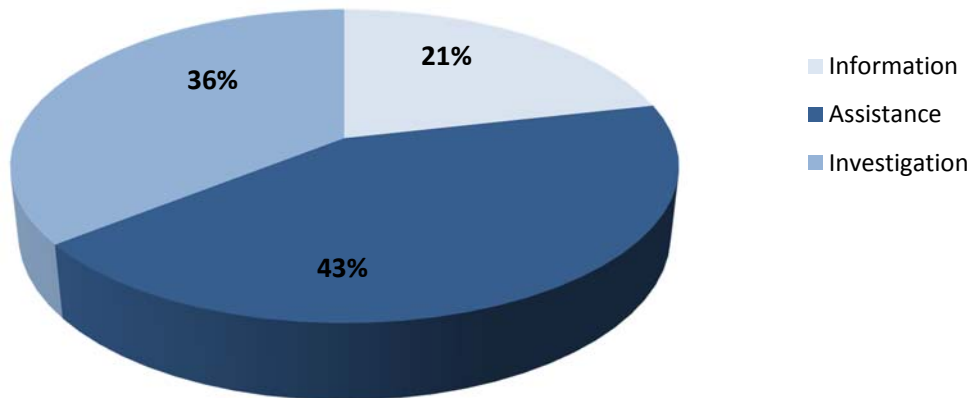
In 2014, the Ombudsman's Office received a total of 34 contacts concerning whistleblower and retaliation matters, in addition to cases carried forward and closed in 2014. These contacts resulted in one of three classifications:

Information: Requests for information or advice which may result in referral.

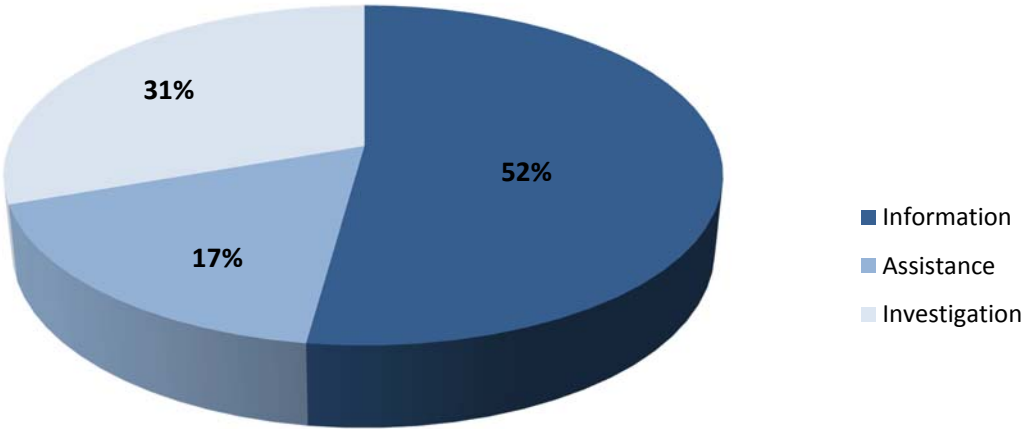
Assistance: Issues resolved through staff-level inquiry, facilitation, counseling or coaching.

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 2014



Resolution of Retaliation Complaints for 2014



Ombudsman’s Office staff worked with the Office of Alternative Dispute Resolution in 2013, to design a **mediation** protocol for whistleblower cases. Under the protocol, Ombudsman’s Office staff may participate actively in confidential mediation sessions, and the Ombudsman must approve or disapprove settlement agreements between whistleblower complainants and county departments. This ensures that settlement terms satisfy the public interest, in addition to institutional and personal interests. Mediated settlements approved by the Ombudsman may be closed without further investigation.

Summarized Details of Select 2014 Cases

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

Complaint	Resolution
<p>Alleged improper payments to an employment services contractor by the Department of Community and Human Services.</p>	<p>Employee alleged that payments to a private employment services contractor from a designated fund were not justified by adequate documentation and may not have been warranted. In response, Ombudsman staff thoroughly reviewed the contract in question, as well as billing records and other documentation; and interviewed appropriate personnel. We found that the payments in question were adequately documented and warranted. However, we also determined the need for improvements in the way the department decides how and when to allocate the funds, including being more transparent internally. We will follow up with the department in 2015 to ensure process improvements are implemented.</p>

<p>Alleged retaliatory termination by the Department of Transportation.</p>	<p>Employee alleged that King County had used an inaccurate methodology to report traffic counts to the State of Washington, resulting in unjustified payments to the County, and that she was later terminated because of her report. Ombudsman staff investigated thoroughly. We found that the department terminated the employee after a third-party complaint, because the employee had misused her assigned county vehicle in violation of County policy. The termination was not retaliatory.</p>
<p>Alleged that a supervisor had instructed Sheriff's deputies to patrol aggressively in designated area, in ways that would violate residents' civil and constitutional rights.</p>	<p>Ombudsman staff transmitted the complaint and supporting documentation to the Sheriff's Internal Investigations Unit, which is the appropriate investigating official for Sheriff's Office whistleblower complaints except those alleging retaliation. We later followed up and determined that the Sheriff's Office investigated the matter and followed up appropriately with the supervisor.</p>
<p>Alleged retaliation by Department of Transportation because of employee's past allegations of wrongdoing.</p>	<p>Employee alleged that management and human resources personnel refused to remove certain records from employee's personnel file as provided in a prior mediation agreement, and denied him the lead position in a pilot program within the work unit, because of his past complaints. Ombudsman staff investigated thoroughly. We found there were legitimate, non-retaliatory reasons why the records were not removed from the personnel file, and that the employee had an equal opportunity in the lead assignment during the pilot program. We accordingly found no retaliation.</p>
<p>Alleged fraudulent billing of the Department of Community and Human Services by a contract health provider.</p>	<p>Ombudsman's staff transmitted the complaint to appropriate department personnel. In response, the department conducted an on-site audit of billing records, which found no evidence of inappropriate charges or billing, but did uncover some irregularities in the contract provider's documentation practices, which are being corrected and will be reviewed again six months after the initial audit findings.</p>
<p>Alleged retaliation by the Department of Transportation for requesting assistance with a task based on a safety concern.</p>	<p>Ombudsman staff thoroughly investigated and found that the employee did not report an alleged violation of law or rule, and thus did not make a protected report of improper governmental action under the Whistleblower Protection Code. The underlying safety concern at issue was important to the employee, but minor, and safety regulations did not support the concern. Anti-retaliation protections therefore did not apply.</p>

Ombudsman Resource Issues

The 2009 whistleblower code amendments vested jurisdiction with the Ombudsman's Office to receive and investigate whistleblower retaliation cases. This 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 informal 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 two thirds of the whistleblower cases that came to our office in 2014 were retaliation cases. Adding retaliation cases to the Ombudsman's portfolio has required a strategic shift in resources. Retaliation cases are high stakes both for reporting employees and for the County, and the underlying whistleblower allegations involve matters that could significantly and substantially threaten public health or safety, wise expenditure of taxpayers' dollars, or even the mission of the agencies involved. These cases are also time-intensive, typically requiring a large number of staff hours. We will continue to monitor the impact on the office's workload.

Additionally, beginning in 2012, we experienced a 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 significant amounts 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.

As in previous years, informal feedback from employees in 2014 indicated that most 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.