

**Washington State Auditor's Office**  
**Whistleblower Report**

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**Department of Corrections**

**Report No. 1007224**

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WASHINGTON  
**BRIAN SONNTAG**  
STATE AUDITOR



**Washington State Auditor  
Brian Sonntag**

February 7, 2012

Bernie Warner, Secretary  
Department of Corrections

***Report on Whistleblower Investigation***

Attached is the official report on Whistleblower Case No. WB 11-038 at the Department of Corrections.

The State Auditor's Office received an assertion of improper governmental activity at the Agency. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the result of our investigation.

Questions about this report should be directed to Investigator Katrina Colo at (360) 725-5342, Special Investigations Manager Kim Hurley at (360) 725-5352 or Director of Special Investigations Jim Brittain at (360) 902-0372.

Sincerely,

**BRIAN SONNTAG, CGFM**  
WASHINGTON STATE AUDITOR

cc: Kathy Smith, Audit and Policy Administrator, Department of Corrections  
Governor Chris Gregoire  
Melanie de Leon, Executive Director, Executive Ethics Board

# Whistleblower Investigation Report

## State of Washington Department of Corrections Thurston County

### **ABOUT THE INVESTIGATION**

We received an assertion that an employee at the Department of Corrections' Washington State Penitentiary slept on the job and used his state computer and time to do work related to another full-time job at an Oregon Department of Corrections facility. The whistleblower also asserted the employee worked on tasks for his spouse, who is employed at a school district in eastern Washington.

### **ASSERTION 1**

**A Correctional Mental Health Counselor 2 at the Department of Corrections used his state computer and workplace for personal use. He also has a second full-time job at the Oregon Department of Corrections and uses state resources for that job.**

### **RESULTS**

We found reasonable cause to believe an improper governmental action occurred.

We confirmed the subject worked a full-time job at an Oregon Department of Corrections facility in Pendleton and a full-time job at the Washington State Penitentiary in Walla Walla. The subject's typical schedule is 10:00 p.m. to 6:30 a.m. Sunday through Thursday in Washington and 7:30 a.m. to 4:00 p.m. Monday through Friday in Oregon. It takes approximately one hour to get from the Washington facility to the Oregon facility. The subject lives in Kennewick, which is an hour away from Walla Walla and an hour away from Pendleton. The subject's schedule for a normal week is shown below:

	<b>Sunday</b>	<b>Monday</b>	<b>Tuesday</b>	<b>Wednesday</b>	<b>Thursday</b>	<b>Friday</b>
12:00 a.m. - 6:30 a.m.	Personal	Washington DOC	Washington DOC	Washington DOC	Washington DOC	Washington DOC
6:30 a.m. - 7:30 a.m.		Commute	Commute	Commute	Commute	Commute
7:30 a.m. - 4:00 p.m.		Oregon DOC	Oregon DOC	Oregon DOC	Oregon DOC	Oregon DOC
4:00 p.m. - 5:00 p.m.		Commute	Commute	Commute	Commute	Commute
5:00 p.m. - 9:00 p.m.		Personal – 4 Hours				
9:00 p.m. - 10:00 p.m.	Commute	Commute	Commute	Commute	Commute	
10:00 p.m. - 12:00 a.m.	Washington DOC	Washington DOC	Washington DOC	Washington DOC	Washington DOC	

Although the subject did not submit a Notice of Outside Employment form to the Department, as required by policy, his supervisor indicated she was aware the subject had another job.

The subject's annual salary in Oregon is \$54,060 and in Washington is \$46,188.

We interviewed three witnesses at the Penitentiary and two stated they had seen the subject sleeping as much as four hours in a shift. These two individuals stated they saw the subject working on items for his Oregon position using his state computer almost daily and also working on items for his spouse's school district work using his state computer. One witness stated they did not pay attention to what the subject viewed on his computer.

The Department provided us with a copy of information found on the subject's computer hard drive and e-mail as of September 13, 2011. We reviewed this information and found:

- Between August 13, 2011 and September 13, 2011, the subject's internet history showed internet use exceeding the Department's de minimis standards requiring personal use to be brief or infrequent. Although we could not determine total website visits, we found that 48 percent of the records were not work-related. Top categories included news, videos, automotive, social networking, shopping, shareware download and games.
- The subject sent and received 13 personal e-mails. These included an e-mail to a computer game helpdesk, to obtain an insurance quote, to obtain a personal income tax return and to obtain medical advice.
- Eight e-mails, including six attachments, were sent to the subject's state of Oregon e-mail account between from January through September 2011. These e-mails and attachments were related to his position held at Oregon Department of Corrections.

We also found 85 files containing non-work related content saved on the computer hard drive. These files included crossword puzzles and word search games.

In February 2011, the subject received a letter of reprimand from his supervisors when he violated Department policies by using a personal flash drive to play war games on his state computer.

Although the Department's policy on Acceptable Use of Technology allows staff to use the internet for personal reasons during non-working hours such as breaks and before and after work, the subject's personal use was not brief or infrequent as required by the policy.

Our review of the subject's computer hard drive and e-mail found two e-mails, including two attachments, sent to his spouse's school district e-mail account between December 2010 and September 2011. In addition, the subject's computer hard drive had a folder containing 123 worksheets and six Individualized Education Program goals and objectives for eight students at the school district. We confirmed the subject's spouse works full-time at a school district in eastern Washington.

During an interview, the subject acknowledged he used his state computer for Oregon Department of Corrections work and for tasks related to his spouse's school district position. The subject also confirmed that he slept during his breaks and that his naps would run over the break period once in a while.

We found reasonable cause to believe the subject used his state computer and workplace for personal use and another job for a governmental entity in another state.

We will forward our conclusions to the Executive Ethics Board for any action as it determines necessary.

### **DEPARTMENT'S PLAN OF RESOLUTION**

*The Department considers the issues identified in this report to be serious. The Appointing Authority has reviewed the draft report and is prepared to follow established procedures to determine the appropriate action to take as soon as the State Auditor's Office provides the supporting documentation and interview notes gathered during their investigation.*

### **STATE AUDITOR'S OFFICE REMARKS**

We thank Department officials and personnel for their assistance and cooperation during the investigation.

# Whistleblower Investigation Criteria

State of Washington  
Department of Corrections  
Thurston County

We came to our determination in this investigation by evaluating the facts against the criteria below:

**Assertion 1:**

RCW 42.52.160 Use of persons, money, or property for private gain.

- (1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

WAC 292-110-010 Use of state resources states, in part:

- (1) The following are permitted uses:
  - (d) A state officer or employee may make an occasional but limited personal use of state resources only if each of the following conditions are met;
    - (1) There is little or no cost to the state;
      - (ii) Any use is brief;
      - (iii) Any use occurs infrequently;
      - (iv) The use does not interfere with the performance of any officer's or employee's official duties; and
      - (v) The use does not compromise the security or integrity of state property, information, or software.
- (5) Prohibited uses.
  - (a) Any use for the purpose of conducting an outside business, private employment, or other activities conducted for private financial gain;
  - (b) Any use for the purpose of supporting, promoting the interests of, or soliciting for an outside organization or group, including, but not limited to, a private business, or a political party, or supporting, promoting the interests of, or soliciting for a nonprofit organization unless provided for by law or authorized by an agency head or designee;
  - (f) Any private use of any state property that has been removed from state facilities or other official duty stations, even if there is no cost to the state.

III. Internet

B. The Internet will be used for official business purposes. However, per WAC 292-110-010, the Washington State Executive Ethics Board has determined that accessing the Internet for personal reasons on an employee's own time during non-working hours (e.g., breaks, before and after work) is acceptable.

1. At a minimum, personal use of the Internet should:
  - a. Be brief in duration,
  - b. Be infrequent,
  - c. Not interfere with the performance of official duties,
  - d. Not disrupt or distract from conducting state business, and
  - e. Not compromise the security or integrity of state property, information, or software.

Department of Corrections, Outside Employment/Volunteer Activities

IV. Reporting Requirements

- A. Staff must report all outside employment and any volunteer activities that have a potential conflict of interest on DOC 03-026 Outside Employment/Volunteer Activity. All changes in outside employment/volunteer activities, including termination, must also be reported.
- B. The staff's Appointing Authority must approve before the staff begins the activity.
  1. Staff who hold outside employment or engage in volunteer activities when starting employment with the Department must submit DOC 03-026 Outside Employment/Volunteer Activity within 30 calendar days of hire.
  2. If the outside employment or volunteer activity is denied after the staff has already accepted or begun the outside activity, the staff must choose to discontinue either the outside activity or employment with the Department.
- C. The Human Resources Director has the delegated authority to approve/deny outside employment and volunteer activities for exempt staff.

## Contacts

### Washington State Auditor

Brian Sonntag, CGFM [brian.sonntag@sao.wa.gov](mailto:brian.sonntag@sao.wa.gov) (360) 902-0360

### Director of Special Investigations

Jim Brittain, CPA [jim.brittain@sao.wa.gov](mailto:jim.brittain@sao.wa.gov) (360) 902-0372

### Deputy Director of Special Investigations

Kim Hurley, CPA [kim.hurley@sao.wa.gov](mailto:kim.hurley@sao.wa.gov) (360) 725-5352

### Special Investigations Coordinator

Julie Cooper [julie.cooper@sao.wa.gov](mailto:julie.cooper@sao.wa.gov) (360) 902-0377

### Director of Communications

Mindy Chambers [mindy.chambers@sao.wa.gov](mailto:mindy.chambers@sao.wa.gov) (360) 902-0091

### Public Records Officer

Mary Leider [publicrecords@sao.wa.gov](mailto:publicrecords@sao.wa.gov) (360) 725-5617

Main phone number (360) 902-0370

Toll-free hotline for reporting government waste, efficiency (866) 902-3900

Website [www.sao.wa.gov](http://www.sao.wa.gov)

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