Reporting & Investigating Improper Governmental Activities

Office of the SVP/Chief Compliance & Audit Officer of the Regents
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http://ucwhistleblower.ucop.edu
Agenda

- Importance of Your Role
- Who Investigates What?
- UC Whistleblower Policies
- Dos & Don’ts
- Exercising Judgment
Association of Certified Fraud Examiners’
CONCLUSION ON DETECTING FRAUD

“Occupational frauds are more likely to be detected by tips than by any other means” Association of Certified Fraud Examiners, 2012 Report to the Nation on Occupational Fraud and Abuse
ACFE’s Definition of Occupational Fraud

The use of one’s occupation for personal enrichment through the deliberate misuse or misapplication of the employing organization’s resources or assets.
Policy on Reporting & Investigating Allegations of Suspected Improper Governmental Activities

- See overview of policies from BOI Pre Work
Fiscal Year 2011 - 2012
Investigations Summary

726 New Cases*

346/48% EP Hotline/Website, Anonymous Reporter
117/16% EP Hotline/Website, Identified Reporter
55/8% Non-Hotline, Anonymous Reporter
208/29% Non-Hotline, Identified Reporter

406 Closed Cases**

83/23% Substantiated
313/77% Not Substantiated

* A Case can include up to or more than 3 Allegations
** Closed Cases include related allegations
Who Performs Investigations?

- Academic Personnel
- Animal Research Office
- Disability Coordinator
- Environmental Health & Safety
- Health Sciences Compliance Officer
- Human Resources
  - Labor Relations
  - Employee Relations
- EEO/AA
- Risk Management
- Student Judicial Affairs
- ECAS Investigations (UCOP)
- Institutional Review Board
- Internal Audit
- Management overseeing ad hoc external processes
- Medical Staff
- NCAA Compliance Officer
- Office of the General Counsel
- Privilege & Tenure Committee
- Research Administration
- Retaliation Complaint Officer
- Title IX Officer
- University Police
- LDO Investigators
Policy Objective

To adhere to the spirit of the state whistleblower statutes by creating

1. an environment in which
   suspected improprieties are brought forward
   without fear of retaliation
   and
2. mechanisms that ensure
   an appropriate institutional response
   to all suspected improprieties
   (not just whistleblower reports).
Definitions

Improper Governmental Act (IGA)
Any activity by a state agency or by an employee that is undertaken in the performance of the employee’s official duties, whether or not that action is within the scope of his or her employment, and that

(1) is in violation of any state or federal law or regulation including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty

or

(2) is economically wasteful, or involves gross misconduct, incompetence, or inefficiency.
Definitions

Protected Disclosure*:

any good faith communication that discloses or demonstrates an intention to disclose information that may evidence

1. an improper act
   or
2. any condition that may significantly threaten the health or safety of employees or the public

if the disclosure or intention to disclose was made for the purpose of remedying that condition.

*Not restricted to whistleblowers.
Key Concepts

- Can be in a variety of forms
- Can be to management OR any University official
- If not recognized as a IGA when made, danger of re-characterization as retaliation complaint
- Malicious intent does not nullify the potential validity of allegations
- Frivolous complaints may themselves be IGAs
- Universityofcalifornia/edu.hotline
- report in English or Spanish 800.403.4744 – report in any language
Investigations Policy Overview

- Reporting to Locally Designated Official (LDO)
  - Triage Process by LDO and Investigations Work Group
    - (Two pronged test—"If True" & Sufficient Basis)
      - Investigation within natural jurisdiction
      - OR
      - Referral to Management*
  
  - Communications, Coordination & Monitoring by LDO

- Reporting to Management, IGA source & others as appropriate

* If the two criteria are not met— "If True" test and "Probable Cause" Standard
### Locally Designated Officials

- **Berkeley** – Linda Williams
- **Davis** – Wendi Delmendo
- **Irvine** – Mike Arias
- **Merced** – Janet Young
- **Los Angeles** – Bill Cormier
- **Riverside** – William Kidder
- **San Diego** – Gary Matthews
- **San Francisco** – Elizabeth Boyd
- **Santa Barbara** – Ronald Cortez
- **Santa Cruz** – Alison Galloway
- **Office of the President** – Dan Dooley

### Local Investigative Bodies

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<tr>
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Reporting Criteria

- Results from significant control or policy deficiency
- Likely to receive media or other public attention
- Involves misuse of University resources or creates exposure or liability in potentially significant amounts
- Significant possibility of resulting from a criminal act
- Involves significant threat to health or safety of employees and/or the public
- Judged significant or sensitive for other reasons
Guidance

- Allegations – not just findings – are reportable.
- Sensitivity and Media Attention override dollar impact.
- Regents Audit Committee’s expectation: “No Surprises.”
- Materiality Counts: balance bias towards disclosure against referrals to LDO for a missing “quart of strawberry ice cream.”
- Remember that matters reported externally trigger internal reporting.
• **Dos**

- Learn *UC Policy reporting channels*
  - Locally Designated Official
  - Internal Audit Director
  - Human Resources Director

- Be alert to informal communications of allegations (protected disclosures)

- Contact Internal Audit and Human Resources before taking any personnel action

- Act with **speed** and Hold the matter **confidential**
When Confronted with Whistleblower Allegations

- **Don’ts**
  - *Dismiss* the matter out of hand
  - Launch *your own investigation*
  - *Confront* the accused or otherwise *tip them off*
  - *Disclose* the matter to any unnecessary parties
  - Try to *settle or resolve* the matter yourself
Whistleblower Program Website

Office of the President

UC Whistleblower

The University has a responsibility to conduct its affairs ethically and in compliance with the law. If you suspect that a UC employee is engaged in improper governmental activities, you should know that UC has policies that can show you how to "blow the whistle" and can protect you from retaliation if the need arises.

This website provides important information for employees and supervisors about the whistleblower policies. Select one of the choices in the left-hand column to find the information you want.

Universitywide Whistleblower Hotline: (800) 403-4744 or universityofcalifornia.edu/hotline
(The hotline is independently operated to help ensure confidentiality)

Whistleblower Poster (pdf)

Rights & Remedies under the ARRA of 2009

Search

For questions regarding website content, please contact Webmaster
Last updated: June 8, 2009
Case Study

- A large University department has a small unit that operates fairly autonomously & with very limited oversight.

- This unit is involved in procuring services from outside vendors and recharging various University organizations.
Background

• A temporary employee was assigned to assist with a backlog problem. This employee reported to her supervisor that a substantial amount of expenses had not been re-charged.

• Senior department management became suspicious at this report and noticed that none of the bills for a particular vendor had been re-charged in over a year.
Decision Point

1) Has a protected disclosure been made?

2) Does this matter meet the criteria for reporting to the LDO or another appropriate office?
Inquiry

• The senior department manager called the phone number listed on the invoices and got an answering machine. The call was not returned.
The manager drove by the address on the invoice and found that it was a UPS mail box store.
Research

- The manager called the Better Business Bureau and conducted a Dun & Bradstreet search without finding any information on the business.
Amount at Risk

- The manager’s research found that the University had paid this vendor in excess of $250,000 over several years.
Considerations

1) Did the manager go too far?
2) Is this matter now reportable to the LDO or another appropriate office?
3) What should the manager’s next steps be?
Action Plan

• With this information, the senior manager and another department supervisor confronted the employee on a Friday afternoon about the vendor and the failure to re-charge for their services.

• The employee was perceived as being evasive but did not admit to any wrongdoing.

• She was told to be available on Monday to go over in detail the operation of her unit.
Reflection

1) Should the manager and the supervisor have confronted the employee with questions about the vendor and the failure to re-charge for the billed expenses?

2) Is this matter now reportable to the LDO or another appropriate office?
Outcomes

- On Monday, the department found that all of the records in the unit had been removed over the weekend and information had been deleted from the employee’s computer.
- The employee had left a message saying that she could be contacted through her attorney.
- Then they called Internal Audit.
Resources

- The Education & Training Page of the Ethics, Compliance & Audit Services site includes case studies, slideshows & videos, under the Whistleblower Training section.

http://www.universityofcalifornia.edu/compaudit/educationtrng.html
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