



**Performance Audit of the State Employee Whistleblower
Program Operated by the State Auditor's Office**

Performed for the Office of Financial Management

Prepared by:

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February 1, 2006

Ms. Wendy Jarrett
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Dear Ms. Jarrett:

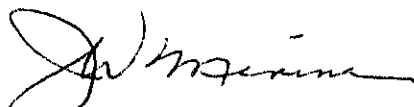
Attached is the report on our performance audit of the State Of Washington Whistleblower Program managed by the Washington State Auditor's Office (SAO).

The Office of Financial Management (OFM) is required to contract for a performance audit of the Whistleblower Program on a cycle determined by OFM (RCW 42.40.110). We conducted the audit in accordance with Generally Accepted Government Auditing Standards. The primary objectives of the audit were to determine:

- Whether the program is acquiring, protecting, and using its resources such as personnel, property, and space economically and efficiently. Also, identify the causes of inefficiencies or uneconomical practices, if any.
- Whether the SAO has complied with significant laws and rules applicable to the program.
- The extent to which the desired results or benefits established by the legislature are being achieved
- The effectiveness of the program

The audit found that the Whistleblower Program was operated with reasonable economy and efficiency, was in compliance with most legal requirements, was achieving results desired by the legislature, and was effective on several levels. The audit also identified areas for improvement, with particular attention to opportunities for increasing program accountability and effectiveness. All of our recommendations should be readily accomplished within existing budget resources.

Sincerely,



John Merina
Merina & Company, LLP
Certified Public Accountants and Consultants



PERFORMANCE AUDIT OF THE WHISTLEBLOWER PROGRAM

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PERFORMANCE AUDIT OF THE WHISTLEBLOWER PROGRAM

Executive Summary

Merina & Company, LLP, conducted a performance audit of the State Employee Whistleblower Program (Whistleblower Program) for the period between July 1, 2002 and June 30 2005 - fiscal years 2003 through 2005. The Office of Financial Management (OFM) is directed by the law to contract for a performance audit of the Whistleblower Program on a cycle determined by OFM (RCW 42.40.110). This report fulfills that requirement.

The audit focused on the compliance, economy and efficiency, and effectiveness of the program. We found that the Whistleblower Program was effective and was achieving the results desired by the Legislature. But there are also opportunities for improvement. The principal conclusions relating to the program as it is operated by the State Auditor's Office (SAO) are summarized below.

Questions Addressed and Summary of Conclusions

1. Whether the program was acquiring, protecting, and using its resources such as personnel, property, and space economically and efficiently. Also, identify the causes of inefficiencies or uneconomical practices, if any.
 - We found no evidence of uneconomical or wasteful practices. Unit personnel were focused on the program mission. Although full investigations often required more time than planned, based on our experience in evaluating similar types of casework, we concluded that the hours expended per full investigation were, on average, reasonable.

2. Whether the SAO has complied with significant laws and rules applicable to the program.
 - We found that preliminary and full investigations of whistleblower assertions were investigated through a controlled and documented process whereby most requirements were met. The primary area of statutory non-compliance concerned the lack of convening a review panel to consider the handling of anonymous assertions. Another area concerned sending out timely notifications at the 5-day, 30-workday, and 90-workday points in the investigation process.

 - The statutes require completion of an investigation in 90 workdays, but do allow for an extension of up to one year as long as a notification is filed with the involved parties. Of 20 investigations reviewed that went beyond 90 workdays, the files showed that written notifications were sent out within or after 90 workdays in 14 instances, and in 6 instances the file contained no evidence that notifications were sent.

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3. The extent to which the desired results or benefits established by the legislature are being achieved.
 - Overall, the program was achieving the desired results and benefits clearly stated in the laws. Expectations for program independence and accountability implicit in the state laws were generally well met. The audit presents two intake process matters for consideration: 1) following up on closed intake assertions that have been referred to other agencies, and 2) increasing the level of documentation to support decisions not to investigate potentially valid and material assertions.
4. The effectiveness of the program.
 - The program was effective in identifying wrongdoing in individual cases, and providing well-documented bases for conclusions. The increasing number of assertions received and investigated provided an indication that the program was apparently effective in encouraging state employees to report improper government activities. The program is potentially effective as a deterrent to wrongdoing, although this is difficult to measure.

The program's effectiveness depends in large part on the type of assertions received, and the assertions cover a wide range of topics. Within its discretion in applying staff resources, the audit presents for consideration two actions for potentially increasing program effectiveness: 1) preserving staff resources for investigating assertions of major violations by limiting time spent on less serious violations known to be widespread in government, such as personal use of state computers; and 2) accepting for investigation assertions of potentially material violations concerning agency managements' enforcement of statutes and program requirements.

Audit Recommendations

1. To provide assurance that assertions referred to other agencies for follow up receive proper attention by independent and objective parties, the SAO should consider assigning staff members to trace a sample of referrals to determine how referrals are being handled by the agencies, by whom, and with what results.
2. To demonstrate and assure adequate consideration of assertions with valid and potentially material violations, the SAO should consider:
 - Increasing the level of documentation supporting decisions not to investigate assertions of potentially serious violations.
 - Preserving staff resources for investigating assertions of major violations by limiting time spent on less serious violations known to be widespread in government, such as personal use of state computers; and

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- Accepting for investigation valid assertions of potentially material violations concerning agency managements' enforcement of statutes and program requirements.
- 3. To help state employees prepare assertions that are within the scope of the Whistleblower Program, the SAO could make available on its website additional clear information about the limits of program authority. The SAO may want to consider providing case summaries of assertions and investigations, with explanations of why the assertions were or were not accepted for review. Having this type of instructive information available could help potential whistleblowers decide if their concerns would likely warrant an investigation, and help encourage reporting of serious violations.
- 4. The program should take steps to comply with the provision of the law requiring it to convene a review panel to consider the handling of cases submitted by anonymous whistleblowers.
- 5. The program should take steps to ensure timely follow up on completed investigations with substantiated assertions.
- 6. The SAO previously conducted a written opinion survey of stakeholders. The program should consider conducting stakeholder surveys on regular basis to gather ideas for improving in program services.
- 7. The SAO should do more to convince state employees of the quality of its Whistleblower Program investigation work. The various available means to convey such information to employees should be used, such as the SAO website, presentations to agency staff members, and presentations before employee organizations.
- 8. State employee confidence in the program is eroded when whistleblowers and subjects report that they have been the targets of retaliation. Although the SAO does not have enforcement authority, the Office is in a visible and influential position to discourage retaliatory behavior and misuse of the program. SAO and program personnel should consider formal contact with whistleblowers and subjects to garner feedback on ways to show support for anti-retaliation measures and imposing meaningful sanctions on those responsible.
- 9. The Whistleblower Program often receives assertions concerning program management and performance issues. Although outside the scope of program responsibilities, such issues can be of considerable value to the SAO's performance audit function in assessing state program risks. SAO personnel should consider devising an internal referral mechanism to serve the performance audit function with potentially productive audit tests.

CHAPTER 1

BACKGROUND AND OVERVIEW

Overview of the Whistleblower Program

The Whistleblower Act, enacted by the Washington State Legislature in 1982, provides an avenue for state employees to report suspected improper governmental activity.

Any Washington state employee may report suspected improper governmental activities. This includes temporary employees, classified and exempt civil service employees and elected officials. The reported activity must have occurred within one year of the filing date. The Act does not authorize the SAO to investigate personnel actions for which other remedies exist, such as employee grievances.

Improper governmental activity has been defined as any action by a state employee undertaken in the performance of the employee's official duties which:

- Results in mismanagement or gross waste of public funds or resources.
- Is in violation of a federal or state law or rule, if the violation is not merely technical or of a de minimus nature.
- Is of substantial and specific danger to the public health or safety.

The SAO's policies and procedures define program requirements and objectives. These include:

- Maintaining public trust in government by providing a means for employees to report improper actions for follow-up.
- Providing a deterrence mechanism to discourage improper employee behavior.
- Initiating correction of management control weaknesses.

Whistleblower Program Organization

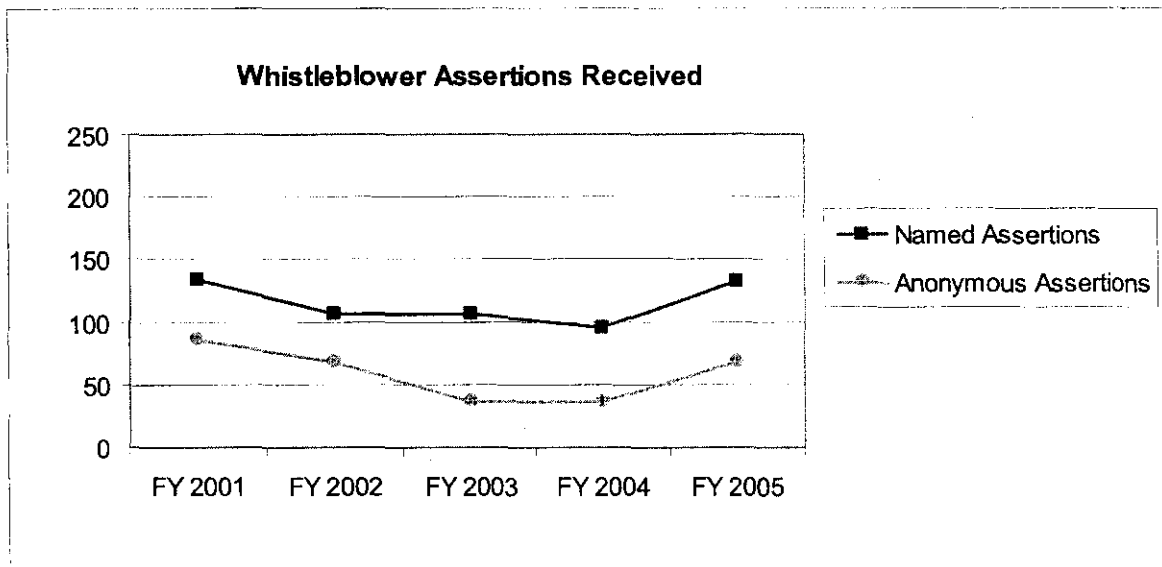
The Whistleblower Program is a separate unit within the SAO. During our audit period the program was operating with two full-time investigators, one part-time investigator, and one supervisor. The staff members have received specialized training through the State's Investigator Training program. Executive Order 98-02 provides that state agencies conducting investigations have documented policies and procedures that are consistent with a state model, and make their best efforts to ensure that employees conducting investigations have successfully completed training for investigators that meets Department of Personnel standards.

PERFORMANCE AUDIT OF THE WHISTLEBLOWER PROGRAM

Case Processing

Whistleblower assertions are received from both named and anonymous parties. Figure 1 shows the trends in the total number of assertions received from named and anonymous whistleblowers from FY 2001 to FY 2005. Total assertions received were up sharply in FY 2005.

Figure 1



Intake Process

The program's receipt of an assertion initiates the review and investigation process depicted in Figure 2. The figure shows major decision points in the review process along with activity statistics for our audit period, FY 2003 through FY 2005.

Assertions of wrongdoing submitted to the Whistleblower Program receive a preliminary evaluation by the program supervisor and a legal advisor. The program does not pursue a complaint if the issue or issues are found to fall outside the scope of the Whistleblower Program statutes, or it is believed that, in light of the nature of the assertions, an investigation would not be cost beneficial. In some instances, with the agreement of the whistleblower, the program will refer the assertion to the subject agency for review. Some assertions are referred to another SAO audit unit. As is shown in Figure 2, approximately 37 percent of assertions received in our audit period were brought forward for investigation.

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Preliminary Investigation

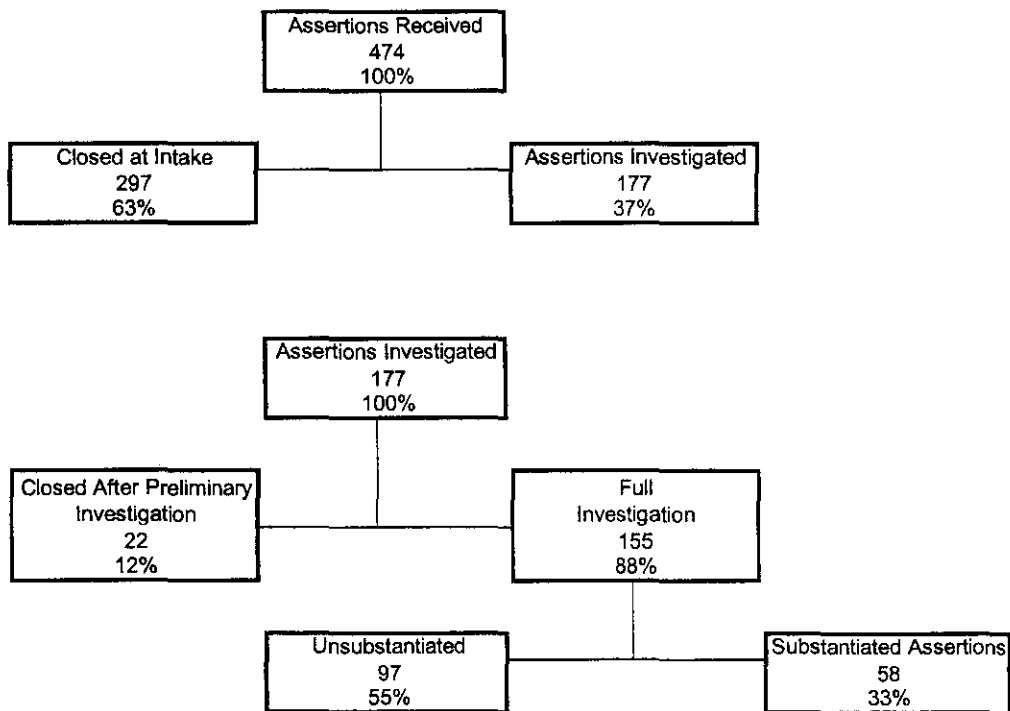
For those assertions assigned for further review, a preliminary investigation is performed by a program investigator who collects information and assesses the potential validity of the assertions. Interviews are conducted with the whistleblower (if named), the subject(s) of the assertions, and subject agency contact person(s). As is shown below in Figure 2, 155 of 177 assertions receiving a preliminary investigation were brought forward for a full investigation. Named whistleblowers, subjects, and the subject agency are to be informed of results in 30 working days.

Full Investigation

The primary purpose of a full investigation is to conclude with certainty on whether or not sufficient evidence exists to support the assertions. A report is prepared for substantiated assertions and published on the SAO website. Compared to a preliminary investigation, substantially more evidence is gathered to test assertions. Determinations are based on a review of the evidence and applicable criteria, with input by the program supervisor. In matters involving questions of legal interpretation the SAO's staff attorney is brought into the review. Briefings are held with the whistleblower (if named), the subject(s), and the subject agency. For substantiated assertions, the agency may respond in writing to outline necessary corrective actions. Figure 2 shows that 58 (33 percent) of the 177 assertions with full investigations were substantiated.

Figure 2

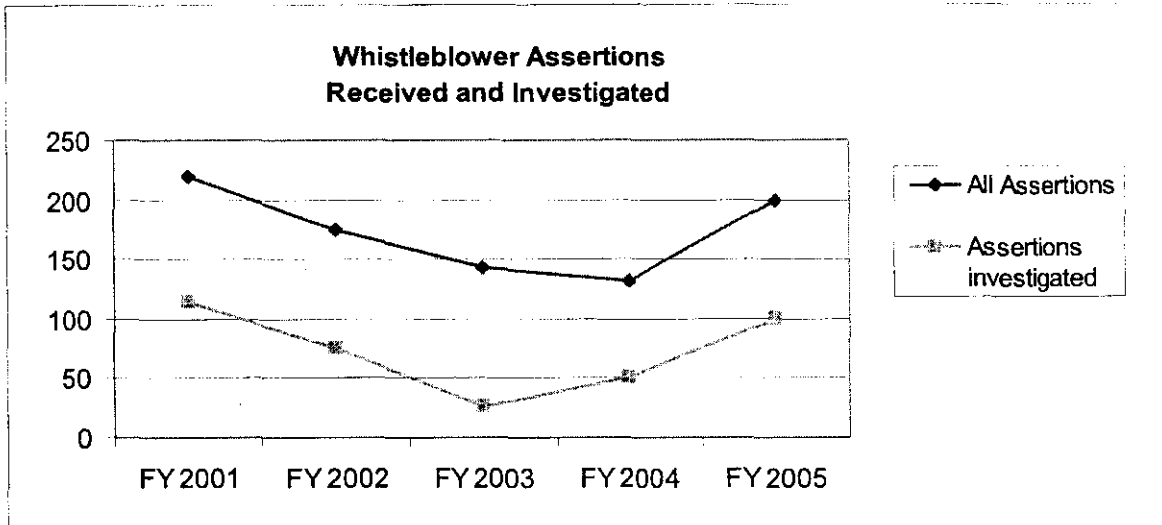
Processing and Disposition of Assertions: FY 2003 to FY 2005



PERFORMANCE AUDIT OF THE WHISTLEBLOWER PROGRAM

Figure 3 shows the trend in all assertions received and investigated between FY 2003 and FY 2005.

Figure 3



Assertion Topics

The program receives assertions on numerous topics, and over 60 percent are determined at intake to be outside the scope of the program's area of authority. Figure 4 shows the number of assertions received by case topic from FY 2003 to FY 2005, generally according the program's classification of assertions. For summary purposes, we grouped the large number of unique topics received under a category titled "Other Law or Policy Violations."

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Figure 4

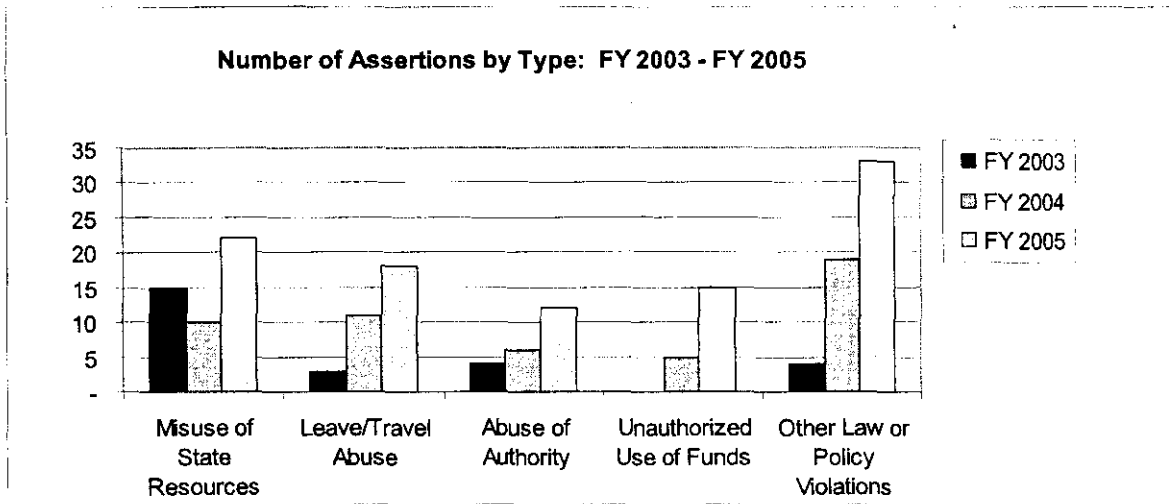
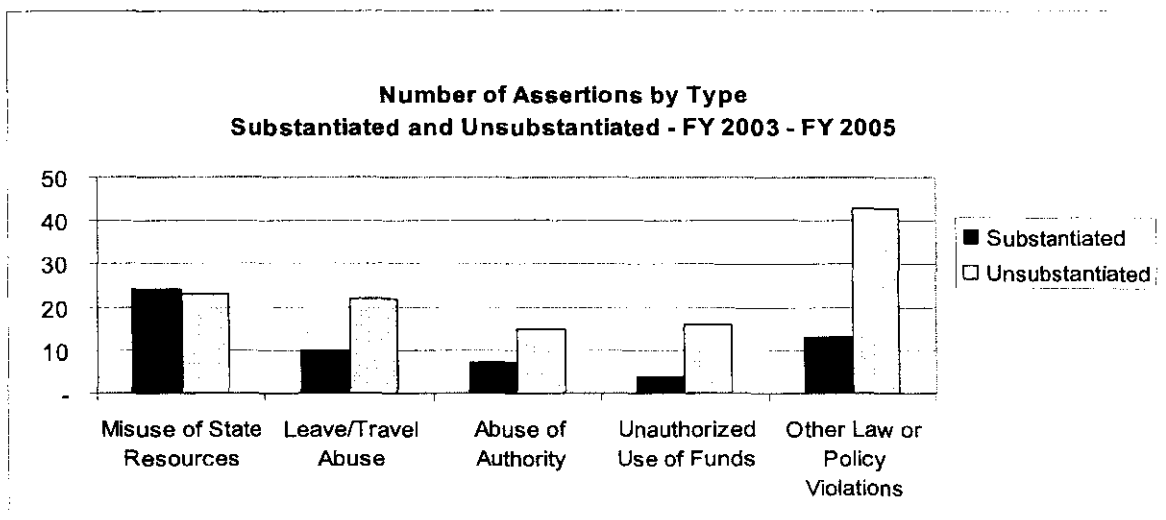


Figure 5 shows that, under the classification system shown above, most substantiated assertions concerned misuse of state resources. Our review of program files showed that these were most frequently assertions that an employee used a state personal computer for personal business, such as sending personal e-mail, accessing internet websites, or accessing personal accounts.

Figure 5

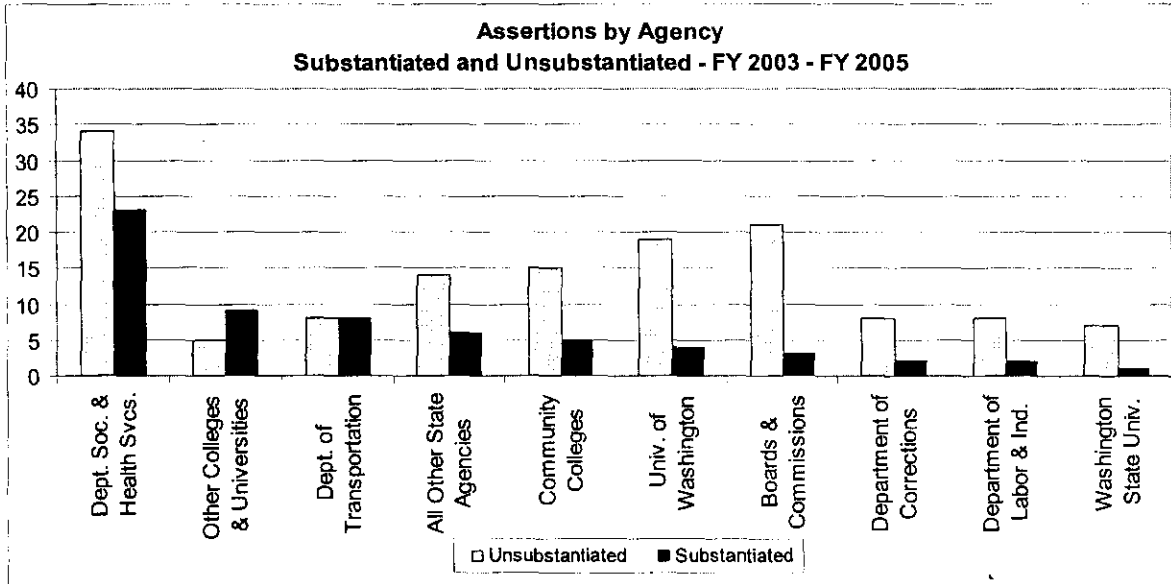


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Assertions by State Agency

Figure 6 shows the number of assertions investigated and the outcomes during our audit period. Individual state agencies with the greatest number of substantiated assertions were the Department of Social and Health Services and the Department of Transportation.

Figure 6



CHAPTER 2

AUDIT RESULTS

The audit found that the Whistleblower Program was operated in substantial compliance with statutory requirements and was generally effective in achieving the results intended by the legislature. Some areas for increased compliance and potentially increased effectiveness were identified by the audit. The principal conclusions and related observations are presented according to the questions posed for audit testing.

1. TO WHAT EXTENT IS THE WHISTLEBLOWER PROGRAM ACHIEVING THE DESIRED RESULTS ESTABLISHED BY THE LEGISLATURE?

Overall, the Whistleblower Program was generally effective in achieving the legislature's desired results; those stated explicitly, as well as those we considered clearly implicit in the laws.

Meeting Legislative Expectations

- State employees appeared to be aware of the program and were increasingly filing assertions of suspected wrongdoing. Figure 1 in this report shows a sharp increase in assertions made in FY 2005. The Whistleblower Program provides a means for state employees to convey reports of state employee mismanagement or gross waste of public funds or resources, violations of laws or rules, or substantial and specific dangers to public health and safety.
- Substantiated assertions were receiving the attention of subject-agency management and corrective actions were being reported. This evidence indicated that the program's work on the assertions investigated was contributing to improved management of state resources.
- The program provides for investigations by professional investigators. Input is received from named whistleblowers, witnesses, subjects, and subject-agency personnel. These diverse perspectives are taken into consideration and used in testing assertions.
- The law provides that the identity of every whistleblower is to be kept confidential unless the whistleblower consents to disclosure or acknowledges their identity in a claim against the State. The program was operated in a controlled manner to protect the rights of those involved in assertions, with noteworthy safeguards to protect identities. The program consistently implemented procedures to prevent unauthorized review of case materials. Examples of these actions include:
 - Directing postal mail to home addresses or post office boxes.
 - Providing whistleblower files through direct delivery to the individuals involved, and not using e-mail to transmit information.

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- Protecting passwords required for accessing program computer files.
- Redacting the names of whistleblowers and witnesses, and other identifying information, from case files provided for any type of public review.
- Exercising discretion in contacting whistleblowers to help preserve confidentiality. Investigators do not identify their affiliation with the program or SAO when contacting whistleblowers at work or when leaving voice mail messages.
- Maintaining case files in secure storage in an access-controlled state building.

Independence

Implicit in the laws is the expectation that the Whistleblower Program will operate with independence and objectivity, without external interference in conducting its duties. The program's location within the SAO provides for organizational independence. The Washington State Constitution establishes the SAO with broad authority, a statewide office and agency set apart from the legislative, executive, judicial, and administrative components of state government and its institutions.

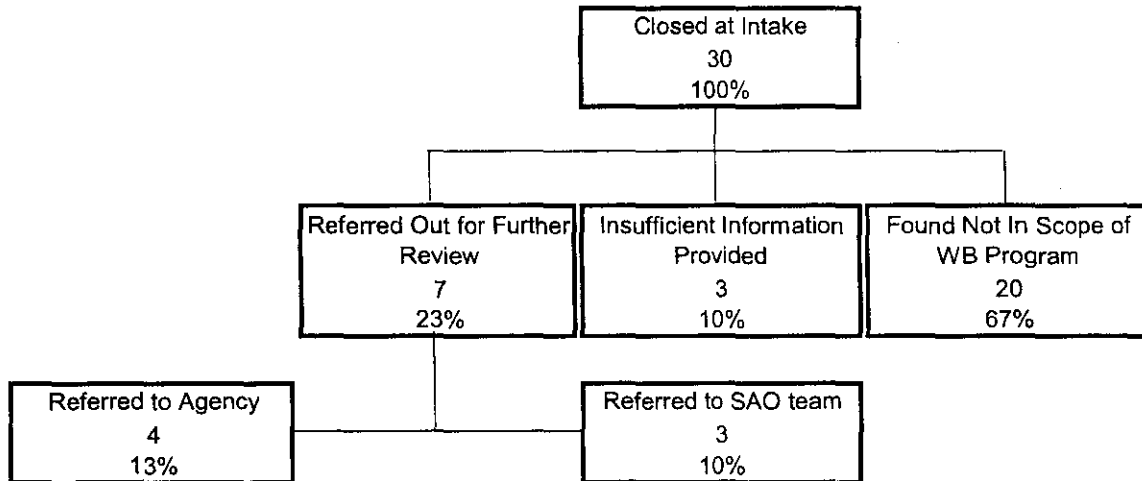
We found that the program operated with a high degree of autonomy from other SAO organizational divisions, with almost no overlap of responsibilities. All investigators work from one central office.

Aspect of Independence for Consideration

With the whistleblower's consent, assertions closed at intake may be referred to the subject-agency for review. Expectations concerning independence therefore cover both the Whistleblower Program as well as the agencies that receive referrals. It is reasonable to expect the program to provide whistleblowers and subjects with some assurance that referred assertions, even if out of scope to the program, will be handled properly and objectively.

In our review of a random sample of 30 assertions closed at intake, 7 (23 percent) were closed and referred out for review, and 4 (13 percent) of these were referred to the subject-agency. Most of these assertions appeared to concern personnel-related matters, but one of these referrals concerned a potentially serious violation.

Figure 7
Disposition of 30 Sampled Assertions Closed at Intake



Referring assertions to the subject-agency presents a risk that referrals may not be properly handled by an independent and objective party within the agency.

Referred assertions may be sent to an agency's internal audit unit. Unless the audit unit has undergone an external Quality Assurance Review, with a finding that independence protections are in place and working, an assumption of independence is questionable.

To assess independence-related risks in the current referral process, the SAO should consider using some audit resources to conduct a review of how referrals are being handled by the agencies, by whom within the agencies, the methodologies used, and with what results.

Accountability

We believe it is implicit in the laws of the state that the Whistleblower Program be held accountable for its work. Our review of a random sample of 46 investigation files showed that, in formal investigations, as evidenced by the documentation of work performed, the program was holding itself to a high standard of accountability. Conclusions were supported by criteria and evidence.

In addition to work documentation, several mechanisms are in place to hold the program accountable for its work. These include:

- Periodic external audits of the program.
- Named whistleblowers, subjects, and agency personnel are made part of the fact-gathering process and have input into written reports before publication.
- Reports of completed investigations are made public and the public has the opportunity to review redacted case files.

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- Whistleblowers and subjects may also request a review of their concerns, as applicable, by the state's Attorney General, the Human Rights Commission, and the Executive Ethics Board.

Aspect of Accountability for Consideration

The SAO should consider extending its documentation practices to increase the level of support for intake decisions to not accept potentially valid and material assertions.

From the population of 297 assertions closed at intake during our audit period we randomly selected 30 for review. The files contained evidence that the rejected assertions were considered for review. The topics of most were clearly out of scope to the program's area of responsibility and we considered the limited amount of documentation supporting these rejections to be appropriate. In a few instances, which we did not question, somewhat more explanatory text would have aided our understanding of the decision. However, for one assertion with a clear and potentially serious issue, the reason(s) for rejection were, in our opinion, not adequately supported.

The case in point was an intake decision made in July 2002. Alleged was illegal duplication and use, for over a year, of hundreds of copies of a Microsoft Office software application at the Western State Hospital. The assertion was not moved to an investigation, but rather was referred back to the hospital. Unauthorized software duplication (piracy) is a criminal matter, and the reported number of pirated copies made this assertion the most serious we reviewed. The file evidence indicated that after the program's communications with the whistleblower and hospital, the agency purchased licenses for the software. This procurement appears to provide support for the assertion, but the case was not pursued. The reason, as shown in the file, was that because of the purchases the assertion was considered a moot issue. No evidence of legal reasoning was provided to support the decision.

As a reflection of the program's documentation standards for investigations, management should consider supplying more explanatory material to support those "judgment calls" where potentially valid and material assertions, such as the case above, are not accepted for review.

2. TO WHAT EXTENT IS THE PROGRAM EFFECTIVE?

Within the context of the overall state government, the effectiveness of the Whistleblower Program is restricted to the program activities allowed by law, and the number and nature of assertions received from state employees. The program is essentially a compliance review service, charged with making a categorical determination - yes or no - as to whether or not an individual assertion is substantiated by reliable evidence. Unlike a performance audit program, the Whistleblower Program does not deal with systemic (organization-wide) causes for problems that span organizational boundaries, or make recommendations for such improvements.

PERFORMANCE AUDIT OF THE WHISTLEBLOWER PROGRAM

Indications of an effective investigation program may be present in various ways, including:

- A pattern of attaining corrective action on substantiated assertions.
- A pattern of improved compliance in agencies with repeat assertions of non-compliance.
- Whistleblower, subject, and subject-agency perceptions that the program can be relied upon to collect adequate evidence and conduct thorough and objective research before reaching conclusions.
- Whistleblower and subject-agency perceptions that the program can be relied upon to investigate and conclude on serious assertions that are within the program's scope of responsibility.
- A pattern of identifying and communicating potential agency management and performance issues, though outside the program's scope, for further review, as applicable, by other SAO audit units.

We determined that the program was clearly effective in:

- Conducting well- documented investigations of specific assertions.
- Ensuring that named whistleblowers, subjects, and subject-agency personnel are contacted as part of the evidence-gathering process.
- Gathering and analyzing evidence from a variety of sources.
- Documenting investigation conclusions.
- Providing for multi-level review of evidence and conclusions.
- Recommending corrective actions with regard to the substantiated instances of wrongdoing.
- Providing information about the program and the investigation results to state employees and the public.

The program was apparently effective in:

- Encouraging state employees to report instances of wrongdoing. The recent increase in assertions received provides supporting evidence. The assertions come from a wide range of agencies and cover many different types of concerns demonstrating the program's reach.

The program is potentially effective in:

- Providing a deterrent effect to employee wrongdoing, although this is difficult to measure.
- Providing information about potential agency management and performance issues to applicable SAO audit units specialized in evaluating such matters.

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Aspect of Effectiveness for Consideration

The program appears to be most effective when it receives and then adequately investigates valid in-scope assertions about serious violations that materially impact subject-agency operations. The program cannot itself initiate investigations and must depend on whistleblowers to provide valid, clear, and timely assertions about such matters. Because assertions involve a variety of violations, program management is faced with the challenge of balancing available staff to provide an appropriate amount of coverage for the assertions received. In this context, investigation assignments and time controls contribute to effectiveness.

For our audit period we noted a prevalence of acceptance and substantiation of assertions involving use or misuse of state property – usually personal computers and the internet. This type of violation is known to be widespread across industries, including government agencies. Of the 26 investigations with substantiated assertions, 13 (50 percent) concerned personal use of state computers. In the prior audit of the program this also was a prevalent type of investigated assertion. These assertions take staff resources that may be needed for work on the most serious assertions. SAO managers recognize this issue. Prior to our audit a decision was made to refer most assertions of personal use of state computers back to the agencies, but to continue investigating assertions of serious related violations, such as the accessing of pornographic websites.

Input from program stakeholders supports management's efforts to balance resources. We conducted a survey of approximately 30 whistleblowers, subjects, and subject-agency personnel. We received responses from 10 individuals. Five respondents expressed views that the program had not applied sufficient resources to investigate assertions considered as very serious violations. Several believed that less serious violations received adequate attention but the most important or difficult issues did not.

3. TO WHAT EXTENT HAS THE PROGRAM COMPLIED WITH APPLICABLE REQUIREMENTS?

We found that the program was operated in compliance with most all legal requirements set out for the program. The following areas of identified non-compliance had also been reported in the prior audit of the program.

- Meeting notification time requirements for initial, preliminary, and full investigations.
- Convening a review panel for anonymous whistleblower assertions.

To test for compliance we reviewed a random sample of 46 Whistleblower Program investigations from fiscal years 2003 through 2005. Our sample size was set for a confidence of level of at least 90 percent with less than a 10 percent margin of error. We reviewed 26 full investigations with substantiated assertions and 20 full investigations with unsubstantiated assertions. We selected for review statutory

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compliance points discussed in the prior audit of the program and others we believed could impact program effectiveness. Non-compliance was determined by the information contained in the file, or a lack of documentation to support a conclusion that the required action had occurred.

Table 1 summarizes the results of testing for statutory compliance. It shows substantial compliance with documentation and confidentiality requirements, areas we considered critical in assuring program quality and accountability.

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TABLE 1
Review of 46 Randomly Selected Whistleblower Case Files
FY 2003 to FY 2005
Compliance with Selected Statutes

Selected Requirements in Statutes	Named Whistleblowers		Anonymous Whistleblowers	
	Comply	Did not Comply	Comply	Did not Comply
Screening Assertions of Improper Actions n=46				
Written Documentation Supports Decision to Proceed to Preliminary Investigation.	41		5	
Written Notification to Named Whistleblowers in 5 Working Days.	20	21	na	na
Preliminary Investigations n=46				
Procedures to Protect Identities of Whistleblowers, Subjects, Witnesses, and Other Parties (applies to all investigations).	41		5	
Written Notifications to Named Whistleblower, Subject, and Agency.	36	5	5	
Written Documentation Supports Decision to Proceed to Full Investigation, Refer, or Close File.	37	4	5	
Complete Initial Study and Notify Named Whistleblower, Subject, and Agency in 30 Working Days.	21	20	3	2
Panel Review of Anonymous Assertions n=5				
3-Person Panel Convened to Review Anonymous Assertions.	na	na		5
Full Investigations n=45 (One assertion referred to agency; 20 investigations exceeded 90 working days of receipt of assertion.)				
Written Documentation Supports Conclusions on Assertions.	40		5	
Evidence of Ongoing Communications with Named Whistleblower, Subject, and Agency.	40		5	
Written Notification for Investigations Exceeding 90 Working Days of Receipt of Assertion. (n=20)	14	6		
Reporting of Completed Investigations n=41 (Four files closed during investigation due to lack of evidence or reasonable cause to continue investigation.)				
Written Report to Named Whistleblower, Subject, Agency	36		5	

Compliance with Time and Notification Requirements

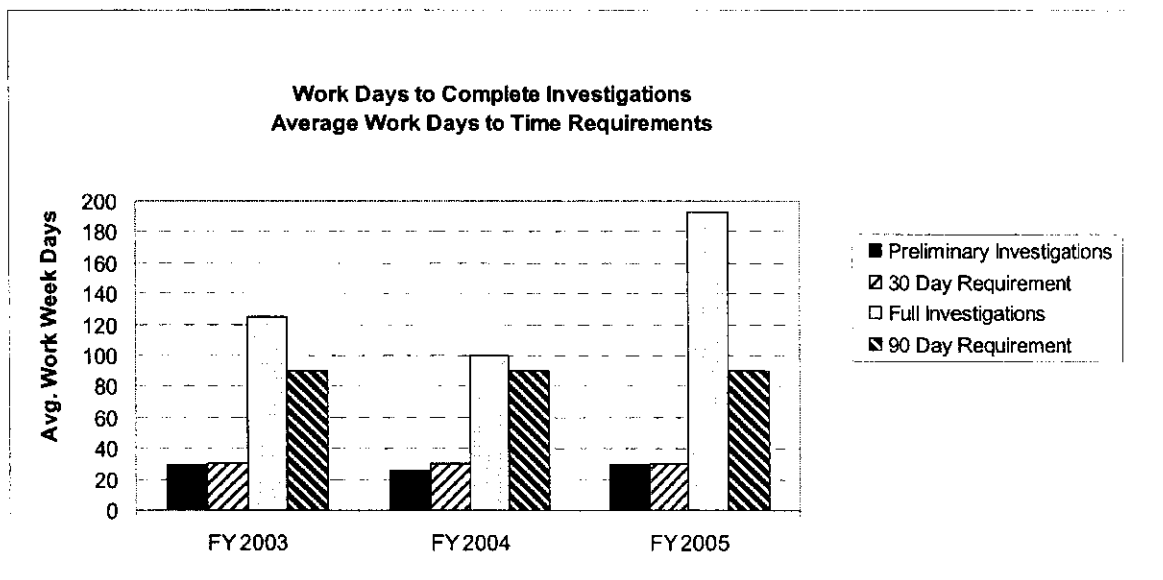
The program inconsistently met the 5-day notification requirement concerning intake review decisions and the 30-workday notification requirement concerning decisions on preliminary investigations. As is shown in Table 1, the non-compliant proportion was substantial; however, the degree of non-compliance (number of days past the deadline) was usually not material. Consequently, we believe the impact on the program's effectiveness was likely minimal.

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The statutes require investigations to be completed within 90-workdays of receipt of the assertion, but the deadline may be extended up to a year with the program’s notification to involved parties. This notification requirement was usually met. For the cases reviewed, notifications for 34 (85 percent) of the 40 investigations going beyond 90 day were in compliance with this notification requirement. These time issues were identified in the prior audit of the program.

Figure 8 shows the total time to complete preliminary and full investigations during our audit period. As was mentioned above, the majority of full investigations going past 90 days were in compliance with notification requirements allowing up to one year for completion.

Figure 8



Compliance with Other Requirements

The statutes require the program to convene a three-person panel to review assertions made by anonymous whistleblowers. None of the five anonymous assertions were shown to be in compliance with this requirement. A program manager described to us a procedure, to be implemented in the near future, that will assure compliance.

Meeting SAO Whistleblower Program Goals and Policies

Table 2 shows compliance with selected SAO goals and policies, determined in our random sample of investigation files.

PERFORMANCE AUDIT OF THE WHISTLEBLOWER PROGRAM

TABLE 2
Review of 46 Randomly Selected Whistleblower Case Files
FY 2003 to FY 2005
Compliance with Selected SAO Policies

Selected SAO Policies	Named Whistleblowers		Anonymous Whistleblowers	
	Comply	Did not Comply	Comply	Did not Comply
Investigations n=45				
Investigation Completed/Closed in 90 Working Days of Receipt of Assertion.	24	16	1	4
Reporting of Completed Investigations n=41				
Evidence of Review and Approval of Final Report by SAO Program Supervisors and Managers	36		5	
Written Report Posted on SAO Website	36		5	
Follow Up on Substantiated Assertions n=25 (26 substantiated assertions; one follow-up not due at time of audit.)				
Follow Up with Agency	8	12	2	3
Follow Up with Agency Within 1 Year After Report of Substantiated Assertions	4	16	1	4

Although the SAO does not require all investigations to be completed, the program has a goal of completing full investigations within 90 days of receipt of the assertion. Table 2 shows that this goal was not met in most instances. As mentioned above, the program usually met statutory notification requirements for longer investigations.

The law provides that the SAO may follow up as necessary to determine whether or not agencies have taken corrective action. The program's policy is to follow up on substantiated assertions, with a target of one year of issuing the report. The file evidence indicated that 10 of 25 (40 percent) substantiated assertions received follow-up, and 5 of 25 (20 percent) received the follow-up within one-year (follow-up was not yet due in one instance). The SAO has no statutory authority to enforce compliance with recommendations.

Performance Measurement

The SAO has identified goals, objectives, strategies, and some performance measures for the program. To the extent that the SAO has compiled performance data, the information is being developed and has not yet been integrated into an internal assessment of performance. We were told that increased attention was being given to this area of performance management.

4. TO WHAT EXENT IS THE PROGRM OPERATING ECONOMICALLY AND EFFICIENTLY?

The average hours expended per investigation and the program budget indicated that the program was being operated with reasonable economy. We identified no areas of waste. Based on our experience in reviewing similar types of investigative processes, we found the hours expended per completed investigation and report to be reasonable. We concluded that the count of days, shown above in Figure 8, did not reflect on the average number of hours expended per investigation, and was not a reliable indicator of efficiency. Table 3 shows the average hours per investigation for fiscal years 2001 through 2004, years for which complete time data was available.

**Table 3
Work and Reporting Performance
Reports Issued and Hours per Completed Investigation***

	FY 2001	FY 2002	FY 2003	FY 2004
Number of Reports Issued	82	67	17	40
Average Investigation Hours Per Report Issued	97	78	98	73

* A written report is part of a completed investigation.

Factors outside the control of the agency were an apparent and frequent cause of slowdowns. In addition to time added by investigators' working multiple cases, other time factors included difficulties in contacting involved parties, arranging meetings, obtaining feedback from involved parties on potential findings, and the internal quality control review process.

Initial intake procedures were apparently effective in screening out complaints and assertions that were outside the scope of program's authority. The initial screening phase has likely saved considerable resources in avoided dead-ends and unproductive research.

As an efficiency measure, the program should consider providing additional assistance to state employees in filing valid and acceptable assertions. The SAO could provide on its website case examples of how various types assertions have been handled, with explanations of why the assertions were or were not accepted for review. Having this type of information available could help potential whistleblowers decide if their concern is within the scope of the program, and if it concerns a material issue that would likely be accepted for investigation.

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5. OTHER MATTERS

Perceptions of Program

We conducted a mail survey of approximately 30 program stakeholders to obtain their views on the program's work. Included were named whistleblowers, subjects, and subject-agency personnel from 10 of our sampled investigations. Four additional surveys were sent to other agencies and persons with experience working with the program. We obtained responses from 10 individuals. Three favorable responses were received; these included two from agencies and one from a whistleblower. Seven of those responding had negative perceptions about how cases were handled, aspects of the investigation process, the outcomes of investigations, or all of the above.

We summarized and grouped the negative perceptions as follows:

1. Perception that the program did not address substantive issues, such as an agency's failure to comply with or implement regulations.
2. Lack of timely case processing and inconsistent communications.
3. Suspicion that assertions were not thoroughly investigated and that conclusions may have been made before all evidence was considered.
4. Reported retaliation by management or other employees; lack of sanctions against those responsible for retaliation.
5. Lack of action by management to correct problems identified by the investigation process.

As is noted earlier in this report, we found some evidence supporting the first and second issues. We found no evidence to support the third issue - the casework we reviewed appeared to be of high quality. The fourth issue concerning retaliation appears to be valid and should concern those agencies of state government with the power to enforce laws. The fifth issue was not within the scope of our audit; we saw that the program follows up on many investigations but the SAO is not empowered to enforce its recommendations.

With regard to the fourth issue concerning retaliation, we concluded that the program was taking reasonable action to protect the identities of whistleblowers and witnesses. Two subject-agency personnel reported that whistleblower assertions had been filed against them in reaction to disputed management and labor decisions. Program-related retaliation of any sort is prohibited by law, but the program is not itself responsible for enforcing the provisions or imposing sanctions. Whistleblower Program personnel believe that the identity of some whistleblowers becomes known to others through internal communication or events internal to the whistleblowers' agencies, and not through any inappropriate disclosures.

Retaliation against whistleblowers is perhaps the most serious threat to the program's effectiveness – retaliation can erode state employees' confidence in filing assertions. As was indicated by this audit and the prior audit of the program, whistleblowers

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responding to surveys report that retaliation occurs. Five persons responding to our survey reported that they were whistleblowers and were subjected to retaliation. The personal and financial costs were such that some indicated they would not file another assertion.

Our reading of the survey responses showed that the SAO is expected to visibly support anti-retaliation programs and meaningful sanctions for those responsible.

In promoting state employee confidence in the program, we concluded that the SAO should do more to convince state employees of the quality of its Whistleblower Program work - the in-depth nature of full investigations, and its confidentiality procedures. In a prior year the SAO conducted a survey of stakeholders' opinions of the program and posted the results on its website. We were told that another survey is planned. Stakeholder surveys have been an important tool for gathering feedback while providing a channel for involved parties to convey their views and experiences with program services. Group meetings with whistleblowers or subjects could also provide helpful input.

CHAPTER 3

RECOMMENDATIONS

1. To provide assurance that assertions referred to other agencies for follow up receive proper attention by independent and objective parties, the SAO should consider assigning staff members to trace a sample of referrals to determine how referrals are being handled by the agencies, by whom, and with what results.
2. To demonstrate and assure adequate consideration of assertions with valid and potentially material violations, the SAO should consider:
 - Increasing the level of documentation supporting decisions not to investigate assertions of potentially serious violations.
 - Preserving staff resources for investigating assertions of major violations by limiting time spent on less serious violations known to be widespread in government, such as personal use of state computers; and
 - Accepting for investigation valid assertions of potentially material violations concerning agency managements' enforcement of statutes and program requirements.
3. To help state employees prepare assertions that are within the scope of the Whistleblower Program, the SAO could make available on its website additional clear information about the limits of program authority. The SAO may want to consider providing case summaries of assertions and investigations, with explanations of why the assertions were or were not accepted for review. Having this type of instructive information available could help potential whistleblowers decide if their concerns would likely warrant an investigation, and help encourage reporting of serious violations.
4. The program should take steps to comply with the provision of the law requiring it to convene a review panel to consider the handling of cases submitted by anonymous whistleblowers.
5. The program should take steps to ensure timely follow up on completed investigations with substantiated assertions.
6. The SAO previously conducted a written opinion survey of stakeholders. The program should consider conducting stakeholder surveys on regular basis to gather ideas for improving in program services.
7. The SAO should do more to convince state employees of the quality of its Whistleblower Program investigation work. The various available means to convey such information to employees should be used, such as the SAO website, presentations to agency staff members, and presentations before employee organizations.

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8. State employee confidence in the program is eroded when whistleblowers and subjects report that they have been the targets of retaliation. Although the SAO does not have enforcement authority, the Office is in a visible and influential position to discourage retaliatory behavior and misuse of the program. SAO and program personnel should consider formal contact with whistleblowers and subjects to garner feedback on ways to show support for anti-retaliation measures and imposing meaningful sanctions on those responsible.

9. The Whistleblower Program often receives assertions concerning program management and performance issues. Although outside the scope of program responsibilities, such issues can be of considerable value to the SAO's performance audit function in assessing state program risks. SAO personnel should consider devising an internal referral mechanism to serve the performance audit function with potentially productive audit tests.

CHAPTER 4

SCOPE AND METHODOLOGY

The Office of Financial Management (OFM) is required to contract for a performance audit of the Whistleblower Program on a cycle determined by OFM (RCW 42.40.110).

OFM contracted with Merina & Company, LLP to conduct this audit covering the period July 1, 2002 and June 30, 2005. Previously, Merina & Company, in conjunction with Public Knowledge, Inc. conducted this required performance audit for the period from July 1, 2000 through June 30, 2002 (Fiscal Years 2001 and 2002). An advantage to the current arrangement is Merina & Company's access of prior audit data and results, enabling analysis of performance trends over an expanded five-year period.

The audit objectives included determining:

- Whether the program is acquiring, protecting, and using its resources such as personnel, property, and space economically and efficiently.
- The causes of inefficiencies or uneconomical practices, if any.
- Whether the program has complied with laws and rules on matters of economy and efficiency.
- The extent to which the desired results or benefits established by the legislature are being achieved.
- The effectiveness of the program.
- Whether the SAO has complied with significant laws and rules applicable to the program.

Audit Methodology

To provide criteria for the audit, we reviewed state laws, rules, and policies applicable to the Whistleblower Program, including the program's policies and procedures manual.

To test for compliance we conducted three random samples of Whistleblower Program cases at major junctures in the program from fiscal year 2003 through 2005. To attain a confidence of level of at least 90 percent with less than a 10 percent margin of error, we separately selected and reviewed:

- 26 full investigations with substantiated assertions.
- 20 full investigations with unsubstantiated assertions.
- 30 intake files with assertions not accepted for review.

From the selected case files, we obtained evidence for compliance testing and statistical analysis. Information obtained included documentation of work performed, communications, notifications, reporting, and evidence of internal reviews.

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We conducted interviews with SAO Whistleblower Program staff and key personnel of other related agencies.

We read Whistleblower Program reports issued in the audit period and followed up on issues identified as most important.

We reviewed the case tracking database maintained by the program and compiled statistics from that database.

We followed up on recommendations in the prior audit of the program.

We analyzed program employee time charges and reviewed employee training records.

We reviewed the results of customer surveys conducted by the SAO in 2002. Because a similar survey had not been since conducted, we conducted a survey of approximately 30 program stakeholders. Included were named whistleblowers, subjects, and subject-agency personnel from 10 of our sampled investigations. Four additional surveys were sent to other entities with experience working with the program.

We contacted named whistleblowers and subjects via telephone and e-mail.

For comparative purposes, we surveyed whistleblower and hotline programs operated by five other state audit agencies to understand their program responsibilities and general policies.

PERFORMANCE AUDIT RESPONSE

PERFORMANCE AUDIT OF THE WHISTLEBLOWER PROGRAM

The Washington State Auditor's Office conveyed to Merina & Company the following written response to the audit report.

We appreciate the work performed by Merina and Company during this performance audit of the Washington State Auditor's Office Whistleblower Program.

We concur with the recommendations and have taken some steps to follow them. For example:

As required by law, we have appointed a review panel to consider the handling of anonymous cases.

We are developing a referral protocol for those assertions that fall outside of the scope of the whistleblower law, but under our new performance audit authority

We are examining ways to keep the program efficient, while still investigating those cases which we believe will uncover significant improper governmental activity. We must carefully balance our resources among whistleblower investigations, and our state and federal audit work, which are all funded from the same source.

Other suggestions regarding surveying those who participate in this process, educating state employees about the program and heightening awareness of retaliation laws may be undertaken as resources permit.

We would also like to clarify two points in the report:

- On page 13 under *Aspect of Accountability for Consideration*, the report references to an assertion which our Office chose not to open as an official investigation. As the report notes, this matter involves a possible criminal offense. Since we are not a law enforcement agency, our Office does not have the authority to investigate criminal matters. In addition, the matter had been corrected by the agency.
- On page 15 under *Aspect of Effectiveness for Consideration*, the report mentions that the program cannot itself initiate investigations. Pursuant to RCW 42.40.040(4), the auditor may self-initiate whistleblower investigations.

We thank Merina and Company and the Office of Financial Management for the work they performed in conjunction with this audit. We look forward to working with them both in the future.