



Whistleblower Program

Office of the Controller - City Services Auditor



Whistleblower Program Quarterly Report:
July 1 Through September 30, 2013

January 16, 2013

Background

The Charter of the City and County of San Francisco charges the Office of the Controller (Controller) to administer a whistleblower and citizen complaint hotline telephone number and Web site and to publicize the hotline and Web site through public advertising and communications to city employees. It also requires the Controller to investigate and attempt to resolve the complaints when appropriate. The Controller receives and tracks complaints on the quality and delivery of government services, wasteful and inefficient city government practices, misuse of government funds, and improper activities by city government officials, employees, and contractors.

Balancing Confidentiality and Transparency

The San Francisco Campaign and Governmental Conduct Code (Code), Article IV, mandates that the Whistleblower Program conduct investigations confidentially. Therefore complainants are not informed about the review of their complaint or the progress of any investigation that may follow. The Whistleblower Program handles complaints according to its internal policies and guidelines and takes action accordingly. Investigations end when the investigator validates a complaint or proves it to be false. Unsubstantiated complaints are closed and no further action is taken. If complaint allegations are substantiated with enough relevant and credible evidence, an appropriate level of corrective or preventive action is taken.

The Whistleblower Program is committed to fairly treating complainants. However, fairness does not allow investigators to align themselves with the interests of complainants. Investigators are required to be free, in fact and appearance, from any impairment of objectivity and impartiality. The Whistleblower Program does not act as an advocate for individuals in their disputes with city departments or employees. The Whistleblower Program will not assist complainants if they are merely dissatisfied with a decision made by a city department or employee. Many departments have administrative processes that individuals may use to appeal decisions that affect them.

Neither complaints nor investigative work product of the Whistleblower Program are subject to disclosure or public records requests. This ensures confidentiality for the complainant and other participants in the investigation. The Whistleblower Program periodically updates the Citizens Audit Review Board so that it may carry out its charter-mandated duty, subject to confidentiality rules, to review Whistleblower Program complaints and the Controller's disposition of those complaints. Further, the Whistleblower Program releases information on the volume and types of complaints it received and investigated, to the extent practicable, as presented in this quarterly report.

Copies of the report may be obtained at:

*Office of the Controller • City Hall, Room 316 • 1 Dr. Carlton B. Goodlett Place • San Francisco, CA 94102 • 415.554.7500
or on the Internet at <http://www.sfcontroller.org>*

Complaints Received

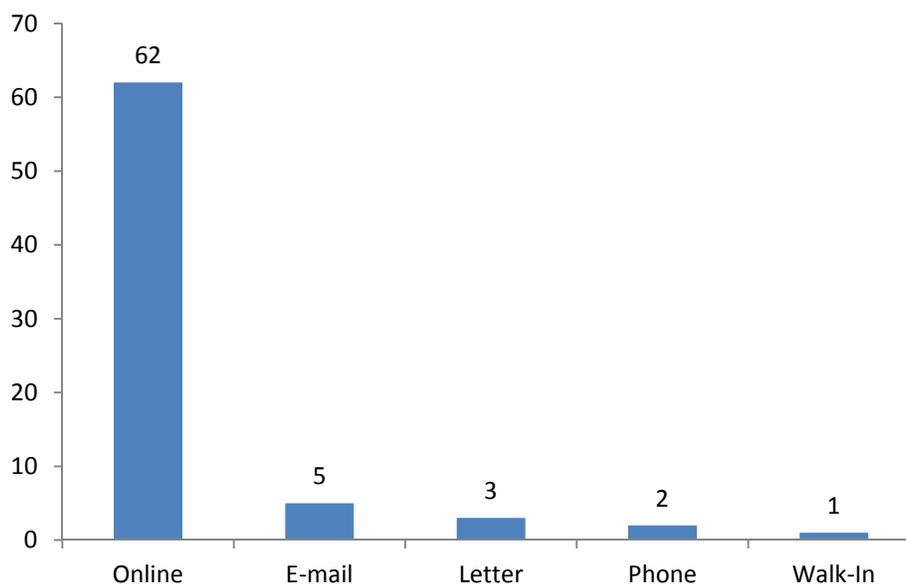
During July through September 2013 (Quarter 1), 73 complaints were filed with the Whistleblower Program, which had 59 open complaints as of July 1, 2013. The Whistleblower Program closed 81 complaints in the quarter, leaving 51 complaints open as of October 1, 2013.

Sources of Complaints Received

As shown in Exhibit 1, 62 (85 percent) of the complaints received in Quarter 1 were submitted through the Whistleblower Program Web site. This includes complaints reported through the City's 311 Customer Service Center. All other complaints were submitted through:

- E-mail to whistleblower@sfgov.org (5 complaints)
- Letters sent to the Whistleblower Program in care of the Controller (3 complaints)
- Direct calls to the Controller's offices (2 complaints)
- Walk-in visits to the Controller's offices (1 complaint)

EXHIBIT 1 Sources of the 73 Complaints Received in Quarter 1



Source: Whistleblower Program

Of the 73 complaints received by the Whistleblower Program in Quarter 1, 47 (64 percent) were filed anonymously. The remaining 26 complaints (36 percent) were from:

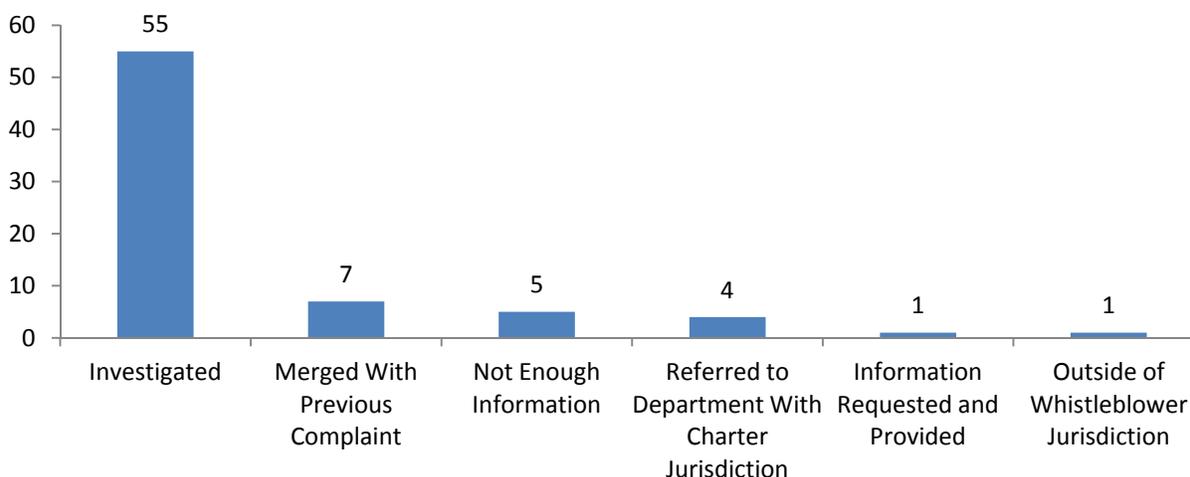
- Persons who are not city employees (17 complaints).
- Active or former city employees (9 complaints).

Actions Taken

Whistleblower Program personnel lead certain investigations, but coordinate the majority of investigations with management of the department associated with the complaint. In these circumstances, department management leads the investigation, and, where appropriate, the Whistleblower Program helps guide the investigation. This coordinated approach uses the expertise of all involved departments and leverages resources to ensure that allegations are resolved in a timely manner.

Management of the department associated with the complaint must report to the Whistleblower Program on any action(s) taken in response to the complaint. Program staff then reviews the departmental actions and investigative findings and determines the adequacy of the information provided and whether additional action is required before closing the complaint. Exhibit 2 displays the actions taken on complaints received in Quarter 1.

EXHIBIT 2 Actions Taken on the 73 Complaints Received in Quarter 1



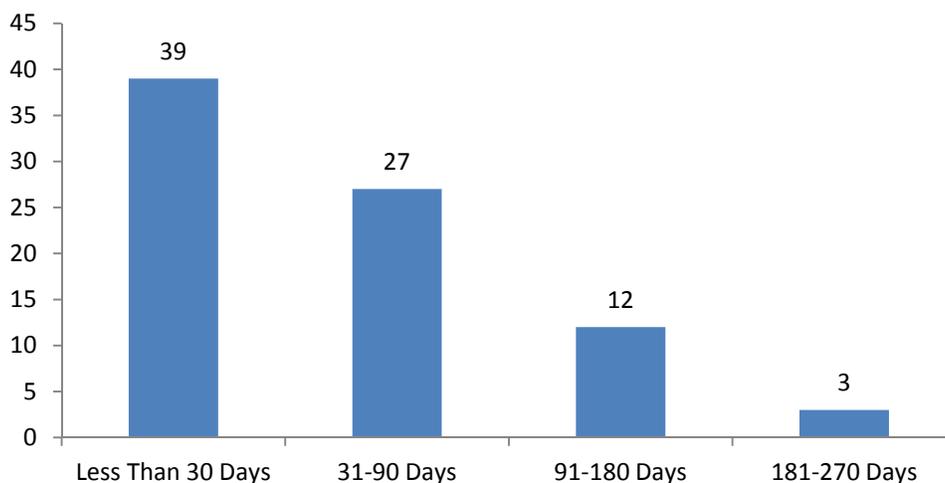
Source: Whistleblower Program

- Of the 73 complaints received in the quarter, 55 (75 percent) were investigated or referred for investigation. Investigation includes research and other preliminary information used in determining whether a full investigation is warranted or possible. The action taken on a complaint may change throughout the course of an investigation.
- The remaining 18 complaints (25 percent) were categorized as follows:
 - Merged With Previous Complaint (7 complaints) – Complainant provided information for a complaint that is already under investigation or was previously investigated by the Whistleblower Program.

- Not Enough Information (5 complaints) – Insufficient information to investigate. For example, no indication of department, employee(s) involved, or vehicle number.
- Referred to Department With Charter Jurisdiction (4 complaints) – Complaint was referred to the city department with charter-granted jurisdiction over the issue (for example, the Ethics Commission, City Attorney, or District Attorney).
- Information Requested and Provided (1 complaint) – Requests for information on City departments or services.
- Outside of Jurisdiction (1 complaint) – Issue falls within the jurisdiction of federal, state, or other noncity government agency or is a suggestion or general complaint about decisions that are within management's discretion.

The Whistleblower Program closed 81 complaints in Quarter 1, the vast majority (81 percent) of which closed within 90 days, as shown in Exhibit 3.

EXHIBIT 3 Age of 81 Complaints Closed in Quarter 1

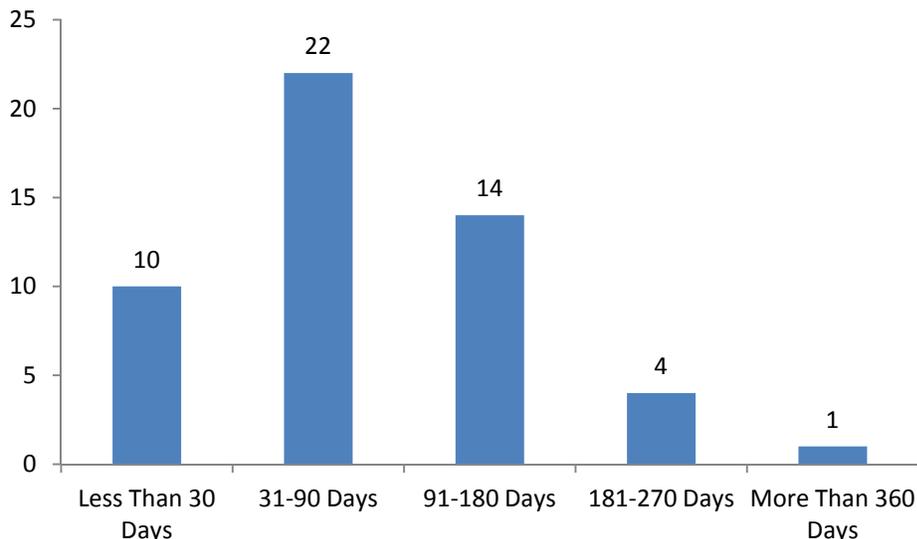


Source: Whistleblower Program

At the close of the quarter, 51 complaints remained open. As shown in Exhibit 4, 32 (63 percent) of these complaints were less than 90 days old. Investigation completion times can vary greatly, depending on the complexity of the issues involved. Steps that influence the length of investigations include:

- Researching issues identified in the complaint.
- Gathering documentation from multiple sources.
- Interviewing witnesses.
- Coordinating resources between departments.

EXHIBIT 4 Age of 51 Complaints Open at the End of Quarter 1



Note: No complaints were 271 to 360 days old.

Source: Whistleblower Program

Closed Complaints That Resulted in a Corrective or Preventive Action Taken

The Whistleblower Program closed 20 complaints that were sustained, in whole or in part, or resulted in a corrective or preventive action taken during Quarter 1. Exhibit 5 lists the complaints by category. Some complaints may contain more than one type of allegation. Complaints in Exhibit 5 are categorized by their primary allegation.

EXHIBIT 5 Complaint Allegations Sustained in Whole or in Part or That Resulted in a Corrective or Preventive Action Taken in Quarter 1

Complaint Category	Number of Sustained Complaints
Improper Activities by City Employees	16
Improper Activities by a Contractor	4
Total	20

Source: Whistleblower Program

Exhibit 6 summarizes the corrective and preventive actions taken on complaints closed in Quarter 1. Some complaints may involve multiple suspects or contain multiple allegations. As a result, it is possible for a complaint to have multiple dispositions.

EXHIBIT 6 **Corrective and Preventive Actions Taken on Complaints Closed in Quarter 1**

Action Taken	Number of Actions Taken
Procedures Changed/Reinforced	10
Other*	7
Employee(s) Counseled (Verbal/Written Warning)	6
Disciplinary/Corrective Action Pending	1
Total	24

* Contractor employee terminated, job announcement reissued, required notifications provided, employee removed from acting position, grant funds returned to granting authority, additional equipment received, new interview panelists

Source: Whistleblower Program

Retaliation Complaints

San Francisco Campaign and Governmental Conduct Code (Code), Article IV requires that the Ethics Commission investigate complaints filed by city officers or employees, or former city officers or employees, alleging retaliation as defined in Code section 4.115(a). Code section 4.115(a) defines “retaliation” as the “termination, demotion, suspension, or other similar adverse employment action” taken against any city officer or employee for having, in good faith, participated in any of the following protected activities:

- Filing a complaint with the Ethics Commission, Controller, District Attorney or City Attorney, or filing a written complaint with the complainant's department, alleging that a city officer or employee engaged in improper governmental activity;
- Filing a complaint with the Whistleblower Program; or
- Cooperating with an investigation of a complaint conducted under the chapter.

“Improper government activity” by a city officer or employee includes the following:

- Violating local campaign finance, lobbying, conflicts of interests or governmental ethics laws, regulations or rules;
- Violating the California Penal Code by misusing city resources;
- Creating a specified and substantial danger to public health or safety by failing to perform duties required by the officer or employee's city position; or
- Abusing his or her city position to advance a private interest.

During July through September 2013, the Ethics Commission did not receive any complaints alleging violations of Code section 4.115(a). During the same period, the Ethics Commission did not have any pending complaints, or close any complaints, alleging violations of section 4.115(a) of the Code. Please note that the Ethics Commission is authorized to investigate complaints alleging retaliation only as defined in section 4.115(a) of the Code.

Highlights of Sustained Complaints in Quarter 1

Complaint Category	Complaint/Allegation	Resolution
Improper Activities by City Employees	An employee was placed in an acting capacity without adequate justification. Management inappropriately reallocated another position.	<p>The Whistleblower Program's investigation substantiated that the employee was placed in an acting position without adequate justification. The employee was removed from the acting position.</p> <p>The investigation did not substantiate that management improperly reallocated an unrelated position.</p>
Improper Activities by City Employees	A department performed work outside of a pilot project area. This work was improperly charged to a grant.	<p>The Whistleblower Program's investigation did not substantiate that it was improper for the department to perform work in the area identified by the complainant. However, the investigation did find that an estimated \$7,434 of work performed in this area was improperly billed to an unrelated grant. This amount is an estimate because the department did not keep track of the time spent on the project.</p> <p>The Whistleblower Program recommended that the department return improper grant charges to the granting authority, ensure that funds are used for the purposes they were granted and are spent only for allowable costs, and accurately track staff time spent on grant-funded projects. The department concurred with these recommendations.</p>
Improper Activities by City Employees	An employee has unreported outside employment.	The department's investigation found that the employee did not obtain approval for secondary employment. Due to the subject's dishonesty during the investigation, the department proposed disciplinary action, which is pending.
Improper Activities by City Employees	A department violated civil service rules to provide preferential treatment to a job applicant with a history of questionable behavior.	<p>The Department of Human Resources found that the job announcement contained a special condition that only this job applicant met.</p> <p>The Department of Human Resources recommended that the job announcement be reissued with the special condition removed and that the list of eligible applicants be re-canvassed. The department implemented these recommendations.</p>

Summarized Details of All Other Sustained Complaints

All complaints in this section were either sustained, in full or in part, or resulted in a department taking some corrective or preventive action during July 1 through September 30, 2013.

Complaint Category	Complaint/Allegation	Resolution
Improper Activities by City Employees	A department inadequately responded to a complaint about the treatment of a youth client.	The investigations did not substantiate that the department's response to the incident was inadequate. As a result of the complaint, the department trained staff to consult with Child Protective Services for any incidents involving known or suspected abuse of a minor, and reviewed reporting guidelines with all staff and managers.
Improper Activities by City Employees	An employee selectively enforces rules for city-licensed vendors. A city-licensed vendor is violating program rules.	The department found that the vendor did not comply with program rules and instructed the vendor to get in compliance. The Whistleblower Program's investigation did not substantiate that the employee selectively enforced rules.
Improper Activities by City Employees	Two employees closed a city facility too early, behave unprofessionally, and are rude to patrons. One of the employees used an illegal substance in the workplace.	The department counseled one of the employees, including with a reminder of the need for proper customer service. The employee that allegedly used an illegal substance in the workplace is no longer with the City for reasons unrelated to this complaint.
Improper Activities by City Employees	Managers do not work the same hours as their staff. One manager consistently leaves work early. The work hours of this group of employees does not meet the public's needs.	<p>The department's investigation found that one employee did not schedule lunch breaks and instead left work early. The department addressed this issue with the employee. Another employee was found to skip lunch or schedule lunch at the end of a shift. The department's investigation did not substantiate that division hours were inadequate to meet the public's needs.</p> <p>The department recommended that the division director reinforce time and attendance policies with all staff and managers and implement processes to monitor the location of managers and staff.</p>

Complaint Category	Complaint/Allegation	Resolution
Improper Activities by City Employees	Employee used a cell phone and did not wear a seatbelt while driving a city vehicle.	The department's investigation did not substantiate the allegations. The employee was reminded not to use a cell phone while operating a vehicle.
Improper Activities by City Employees	A department improperly administered a hiring interview.	The department's investigation substantiated the allegations. The investigation found that panelists deviated from the list of approved interview questions. Applicants were given another opportunity to interview with a new group of panelists. Managers of the hiring division were scheduled for equal employment opportunity training.
Improper Activities by City Employees	An employee used a cell phone and recklessly drove a city vehicle.	The investigation found that the allegation of phone use while driving was substantiated. The employee acknowledged answering the phone while driving. The investigation could not substantiate whether the employee drove recklessly. The employee was issued written policies on safe driving and cell phone use and was verbally warned.
Improper Activities by City Employees	Two employees behaved inappropriately and unprofessionally in front of other employees and clients.	The investigation did not substantiate that the subject employees behaved inappropriately. The employees involved were counseled on appropriate behavior in the workplace.
Improper Activities by City Employees	A department failed to investigate discrimination allegations.	The investigation found that this allegation was unsubstantiated. However, the investigation found that the department failed to inform the complainant of the status of the investigation and of the complainant's appeal rights. The department provided the complainant with the required notifications.
Improper Activities by City Employees	An employee operated a city vehicle dangerously.	The investigation did not substantiate the allegation. The department counseled employees in this unit on how to properly operate a vehicle.
Improper Activities by City Employees	Employees made inappropriate remarks to coworkers.	The investigation did not substantiate the allegation. The department reissued harassment policies and procedures and provided training for employees in the unit.

Complaint Category	Complaint/Allegation	Resolution
Improper Activities by City Employees	Employee used a city vehicle for a personal errand and took city equipment for personal purposes. Another employee records time not worked. Employees held a party on overtime.	The department stated that the employee's use of a city vehicle did not violate the department's statement of incompatible activities. However, the department reminded the employee of the restrictions on using city equipment for personal purposes. Allegations that employees took equipment, recorded time not worked, and held a party on overtime were not substantiated.
Improper Activities by a Contractor	A contractor's employee sees a client after work hours. The contractor's employees live with clients, speak and interact with clients inappropriately, and conduct business transactions with clients.	The investigation confirmed that a client lived with a contractor's employee for several months, a violation of the contractor's policy. As a result, the contractor terminated the employee. Further, the contractor held training to address staff-client relationships and appropriate behavior.
Improper Activities by a Contractor	A contractor does not maintain a building's single-room occupancy units and violates contract provisions.	The department's investigation did not substantiate allegations concerning the maintenance of single room occupancy units. However, the investigation found that the building's elevators cannot fit two wheelchairs, as required by the building code. The department's project manager will keep track of the number of wheelchair-bound residents in the building to ensure that a prompt evacuation can occur in the event of an emergency.
Improper Activities by a Contractor	A contractor performed work without necessary permits, was awarded contracts despite not having the lowest bid, and did not have the proper license to perform the required work. Contractor bid sheets were marked and altered. Further, the department used a modified version of a form to certify test results.	<p>The Whistleblower Program's investigation found the allegation that the contractor performed work without the necessary permits was substantiated. The investigation also found that the contractor's bid sheets, as well as those of other contractors, contained alterations and markings, but did not substantiate that any improper activities occurred. The Whistleblower Program did not substantiate that the contractor did not have the necessary license to perform the required work. The investigation did not substantiate that the contractor needed to be the lowest bidder. Further, the department no longer uses the modified form to certify test results.</p> <p>The Whistleblower Program recommended that the department ensure that contractors obtain</p>

Complaint Category	Complaint/Allegation	Resolution
		necessary permits before performing construction and that the department no longer allows altered and marked bid sheets. The department concurred with both recommendations.
Improper Activities by a Contractor	A vendor does not comply with the terms of its contract.	The Whistleblower Program's investigation found that the vendor generally complied with the terms of its contract. However, the investigation found that the vendor did not meet a significant contract milestone for equipment testing and that the department may be entitled to liquidated damages for this delay. The Whistleblower Program recommended that the department determine if it is entitled to liquidated damages from the vendor. The department concurred with this recommendation and determined that it was entitled to \$3,000 in liquidated damages. The department elected to receive additional equipment from the vendor in lieu of deducting liquidated damages from payments owed to the vendor.