



# Whistleblower Program

## Office of the Controller - City Services Auditor



**Whistleblower Program Quarterly Report:  
October 1 Through December 31, 2013**

**February 11, 2014**

### **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 them 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 products 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 them. 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

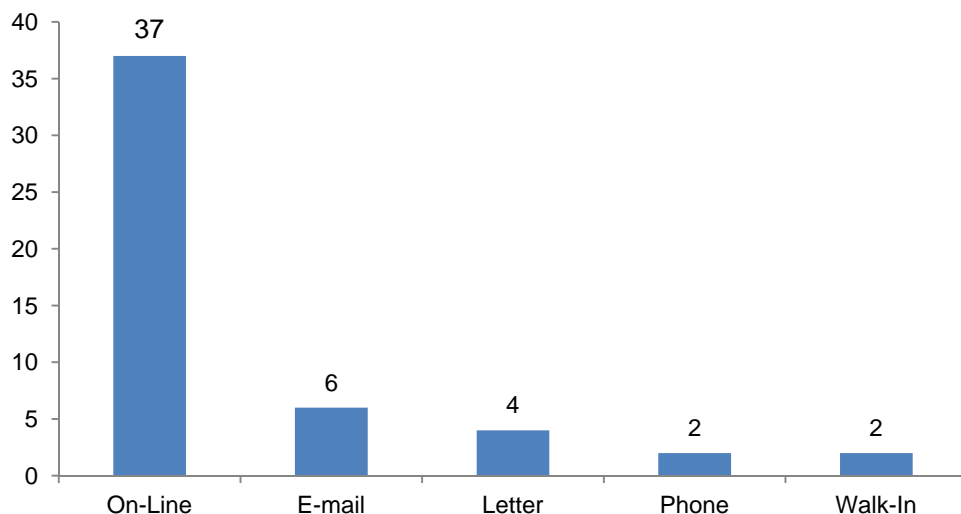
During October through December 2013 (Quarter 2), 51 complaints were filed with the Whistleblower Program, which had 51 open complaints as of October 1, 2013. The Whistleblower Program closed 63 complaints in the quarter, leaving 39 complaints open as of January 1, 2014.

## Sources of Complaints Received

As shown in Exhibit 1, 37 (73 percent) of the complaints received in Quarter 2 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 (6 complaints)
- Letters sent to the Whistleblower Program in care of the Controller (4 complaints)
- Direct calls to the Controller's offices (2 complaints)
- Walk-in visits to the Controller's offices (2 complaints)

**EXHIBIT 1** Sources of the 51 Complaints Received in Quarter 2



Source: Whistleblower Program

Of the 51 complaints received by the Whistleblower Program in Quarter 2, 36 (71 percent) were filed anonymously. The remaining 15 complaints (29 percent) were from:

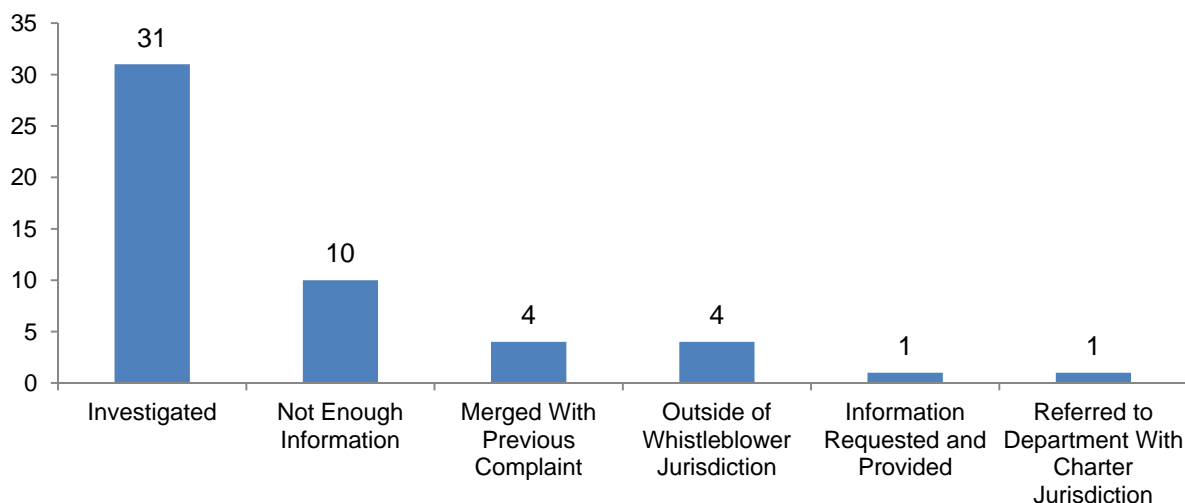
- Persons who are not city employees (10 complaints).
- Active or former city employees (5 complaints).

## 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 2.

**EXHIBIT 2**      **Actions Taken on the 51 Complaints Received in Quarter 2**



Source: Whistleblower Program

- Of the 51 complaints received in the quarter, 31 (61 percent) were investigated or referred for investigation. Investigation includes research and other preliminary information developed in determining whether a full investigation is warranted or possible. The action taken on a complaint may change during an investigation.
- The remaining 20 complaints (39 percent) were categorized as follows:
  - Not Enough Information (10 complaints) – Insufficient information to investigate. For example, no indication of department, employee(s) involved, or vehicle number.

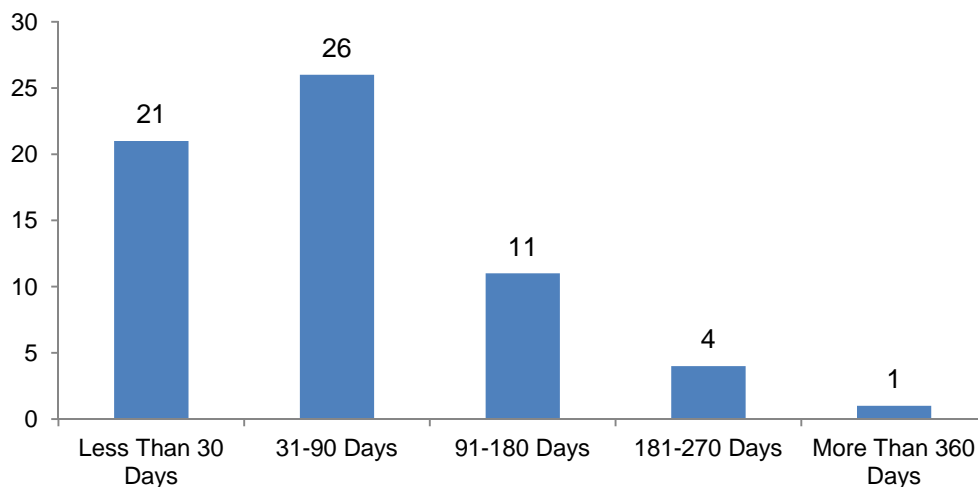
- Merged With Previous Complaint (4 complaints) – Complainant provided information for a complaint that is already under investigation or was previously investigated by the Whistleblower Program.
- Outside of Jurisdiction (4 complaints) – Issue falls within the jurisdiction of federal, state, or other noncity government agency or is a suggestion or general complaint about decisions that are within management’s discretion.
- Information Requested and Provided (1 complaint) – Requests for information on city departments or services.
- Referred to Department With Charter Jurisdiction (1 complaint) – Complaint was referred to the city department with charter-granted jurisdiction over the issue (for example, the Ethics Commission, City Attorney, or District Attorney).

The Whistleblower Program closed 63 complaints in Quarter 2, the vast majority (75 percent) of which were closed within 90 days, as shown in Exhibit 3.

---

**EXHIBIT 3    Age of 63 Complaints Closed in Quarter 2**

---



Note: No complaints were 271 to 360 days old.

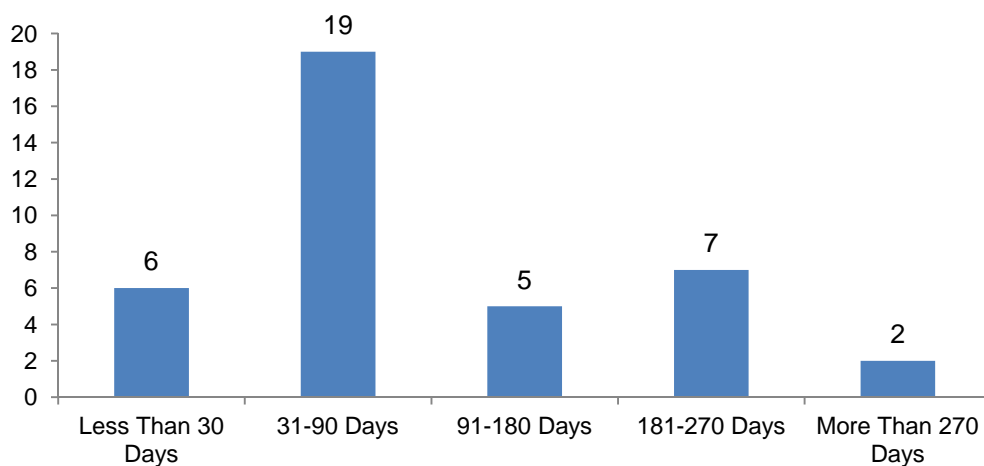
Source: Whistleblower Program

---

At the close of the quarter, 39 complaints remained open. As shown in Exhibit 4, 25 (64 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 39 Complaints Open at the End of Quarter 2**



Source: Whistleblower Program

#### **Closed Complaints That Resulted in a Corrective or Preventive Action Taken**

The Whistleblower Program closed 18 complaints that were sustained, in whole or in part, or resulted in a corrective or preventive action taken during Quarter 2. 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 2**

Complaint Category	Number of Sustained Complaints
Improper Activities by City Employees	16
Wasteful and Inefficient Government Practices	1
Other*	1
<b>Total</b>	<b>18</b>

\* Employee exceeded time allowable in classification

Source: Whistleblower Program

Exhibit 6 summarizes the corrective and preventive actions taken on complaints closed in Quarter 2. Some complaints may involve multiple suspects or contain multiple allegations. As a result, it is possible for a complaint to have multiple dispositions.

<b>EXHIBIT 6      Corrective and Preventive Actions Taken on Complaints Closed in Quarter 2</b>	
Action Taken	Number of Actions Taken
Procedures Changed/Reinforced	9
Other*	7
Employee(s) Counseled (Verbal/Written Warning)	5
Disciplinary/Corrective Action Pending	3
<b>Total</b>	<b>24</b>

\* Other includes: an employee declining further interaction with a member of the public, the monitoring of overtime use, the separation of an employee from a city position, and the changing of an employee's business card.

Source: Whistleblower Program

## Retaliation Complaints

The Ethics Commission has the authority to investigate complaints that allege violations of certain state and local laws that relate to campaign finance, conflicts of interest, lobbying, campaign consultants, and governmental ethics.

The San Francisco Campaign & Governmental Conduct Code, Chapter IV, requires the Ethics Commission to investigate complaints filed by city officers or employees or former city officers or employees alleging retaliation as defined in Section 4.115(a). 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 Controller's Whistleblower Program.
- Cooperating with an investigation of a complaint conducted under Chapter IV.

"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.
- Abusing his or her city position to advance a private interest.

For October through December 2013 the Ethics Commission has not received any complaints alleging violations of Section 4.115(a) of the Campaign and Governmental Conduct Code. During the same period, the Ethics Commission has not had any pending complaints or closed any complaints alleging violations of Section 4.115(a). (The Ethics Commission is authorized to investigate complaints alleging retaliation only as defined in Section 4.115(a).)

### Highlights of Sustained Complaints in Quarter 2

Complaint Category	Complaint/Allegation	Resolution
Other	Employees hold positions in a student trainee/intern job classification longer than allowed.	The Whistleblower Program's investigation did not substantiate the allegation but did find that one employee in the student trainee/intern job classification did not meet the minimum qualifications of the position. The department separated the employee from this position.
Improper Activities by City Employees	An employee misuses the work substitution program.	The department's investigation substantiated the allegation, finding that the employee misused the program by paying four other employees to work the employee's shift. The department took disciplinary action against all employees involved.
Improper Activities by City Employees	An employee is excessively absent from work, verbally abuses staff, fails to perform duties, and uses a city position to secure personal benefits.	The department's investigation substantiated some of the allegations. It found that the employee did not receive proper authorization for sick leave. The department reported that the employee's supervisor will implement requirements for approving sick leave. The investigation also found that there were incidents in which the employee verbally abused staff. As a result, the department recommended the employee attend counseling to address behavioral issues. The department's investigation did not substantiate any of the other allegations.

### 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 in October through December 2013.

Complaint Category	Complaint/Allegation	Resolution
Improper Activities by City Employees	An employee parked a city vehicle in a red zone.	The department's investigation substantiated the allegation. This occurred when the employee was unloading and loading equipment. The employee was instructed to park only in legal spaces.

**Office of the Controller, City Services Auditor**  
**Whistleblower Program Quarterly Report: October Through December 2013**

<b>Complaint Category</b>	<b>Complaint/Allegation</b>	<b>Resolution</b>
Improper Activities by City Employees	An employee maintains an inappropriate relationship with a subordinate and misrepresents himself as the department's attorney.	The department's investigation did not substantiate that the employee engaged in an inappropriate relationship with his subordinate. The investigation also did not find that employee misrepresented himself as a department attorney but found that the employee included "Esq." on his business card. Although this designation on the business card of an employee not working as a department attorney is not improper, the department requested that employee remove this title from his business card to avoid confusion or misinterpretation.
Improper Activities by City Employees	An employee used a cell phone while driving a city vehicle.	The department's investigation substantiated the allegation. Disciplinary action is pending.
Improper Activities by City Employees	Employees performing traffic control were rude to a driver.	The department's investigation substantiated the allegation. The department scheduled refresher training on traffic control. Additional disciplinary action against the employees is pending.
Improper Activities by City Employees	An employee used a cell phone while driving a city vehicle.	The department's investigation substantiated the allegation. The employee acknowledged answering the phone while driving. The employee was issued policies on safe driving practices and given a written reprimand.
Improper Activities by City Employees	An employee drove a city vehicle on a pedestrian walkway.	The department's investigation did not substantiate the allegation. However, the department will reinforce vehicle policies to all employees in the division.
Improper Activities by City Employees	An employee parked a personal vehicle in the department's customer lot.	The department's investigation substantiated the allegation. The employee was given a verbal warning. Staff was reminded that the parking lot is for customer use only. Instructions stating the same were also posted in the staff break room.
Improper Activities by City Employees	An employee behaved inappropriately toward a member of the public.	The department's investigation did not substantiate the allegation. However, the employee had declined further interaction with this member of the public. The employee was reminded of the department's standards on professionalism.
Improper Activities by City Employees	Two employees do not pay parking tickets issued to their city vehicles.	The department's investigation substantiated the allegation. The department identified all outstanding parking tickets associated with the two employees identified in the complaint. The employees then paid the fines for all of the outstanding tickets received on their assigned city vehicles.

**Office of the Controller, City Services Auditor**  
**Whistleblower Program Quarterly Report: October Through December 2013**

<b>Complaint Category</b>	<b>Complaint/Allegation</b>	<b>Resolution</b>
Improper Activities by City Employees	An employee smoked in a city vehicle. Also, the vehicle does not have the necessary identifying seals.	The department substantiated that the employee smoked in a city vehicle. The department also verbally reinforced the no-smoking policy to the employee. The department's investigation found that the city vehicle had been recently detailed and was scheduled to receive the necessary city seals.
Improper Activities by City Employees	A city vehicle was parked for an extended period of time near a park, giving the impression that it had been used for personal purposes.	The department's investigation did not substantiate misuse of the vehicle. However, the department reminded employees that vehicles are to be used only for work purposes.
Improper Activities by City Employees	A clinic employee steals city funds, which are replaced by another employee.	The department's investigation did not substantiate the allegations. However, the investigation identified areas of weakness in the cash-handling processes at the clinic. The department recommended several changes to the clinic to strengthen its cash-handling processes and to lessen opportunities for clinic staff to misappropriate funds.
Improper Activities by City Employees	An employee regularly brings family members into the office, which exposes sensitive information.	The department's investigation did not substantiate the allegation that the employee consistently brought family members into the workplace. However, supervisors reminded staff that frequent and extended personal visits to the office are not allowed.
Improper Activities by City Employees	An employee made unprofessional remarks about a patient.	The department's investigation did not substantiate the allegation. The employee was verbally reminded to act professionally around patients.
Wasteful and Inefficient City Government Practices	A unit's staffing practices are inadequate. Specifically, staff does not have the expertise to perform work, certain unit functions are overstaffed, certain employees were improperly hired, and staff scheduling is inefficient.	The department's investigation reviewed employees' collective bargaining unit agreements, staff's resumes, and department overtime reports. The investigation recommended that the department create job classifications to reflect the changing nature of the unit's work and revise one employee's job description to include the employee's additional duties and responsibilities. Further, the investigation found that one employee's overtime was much greater than the average overtime earned by other unit employees. The department implemented new internal controls around overtime, and the investigation recommended that the department continue to monitor overtime to ensure that it is offered in accordance with labor agreements. The investigation did not substantiate allegations concerning overstaffing or improper employee hiring.