

April 19, 2011

Members, Citizen's General Obligation Bond Oversight Committee (CGBOC)  
316 City Hall  
San Francisco, CA 94102

Re: Status of review of Whistleblower Procedures and Protocols

Ladies and Gentlemen:

This is a follow up to a brief oral report to the CGBOC Audit Subcommittee at the February 3, 2011 meeting concerning Whistleblower Procedures and Protocols.

At the direction of CGOBOC Committee Chair, Mr. Abraham Simmons, I have prepared and attached a brief written report on the Whistleblower Program for consideration by the full CGBOC.

I found that the procedures and protocols complied with City Charter requirements and that investigations were adequately documented and follow-up was performed in a reasonable and professional manner.

I would be pleased to provide additional information or comments that Committee Members might find informative at our April 28, 2011 meeting.

Respectfully submitted,

John W. Madden  
CGOBOC Committee Member

**Whistleblower Program**  
**City and County of San Francisco**

**Whistleblower history.**

The Whistleblower Program was initially created in 1988 by Mayor Art Agnos. Between 1988 and 2003 it resided in a variety of City departments with mixed results. In 2003, a charter amendment adopted by the voters created the City Services Auditor, legislatively established the Program, and placed the Whistleblower Program under the City Services Auditor (City and County Controller).

The legislation, contained in Appendix F to the San Francisco City Charter, gives the Controller broad authority to administer and publicize a whistleblower hotline and website for citizens and employees to report wrongdoing, waste, inefficient practices and poor performance in city government and service delivery

The legislation [Appendix F] also authorizes the **Citizens' General Obligation Bond Oversight Committee** (CGOBOC) to function as an independent Citizens Audit Review Board to advise the Controller/City Services Auditor, to recommend departments in need of comprehensive audit, and to review citizen complaints received through the whistleblower program. The legislation provides that the Controller investigate and report and gives the CGOBOC review duties but places the obligation for ultimate resolution and/or corrective practice with the affected department head or governing Board or Commission. In some cases the department responsible for ultimate resolution might be Ethics Commission, Human Resources Department or one of the City's civil or criminal law agencies.

**Review process.**

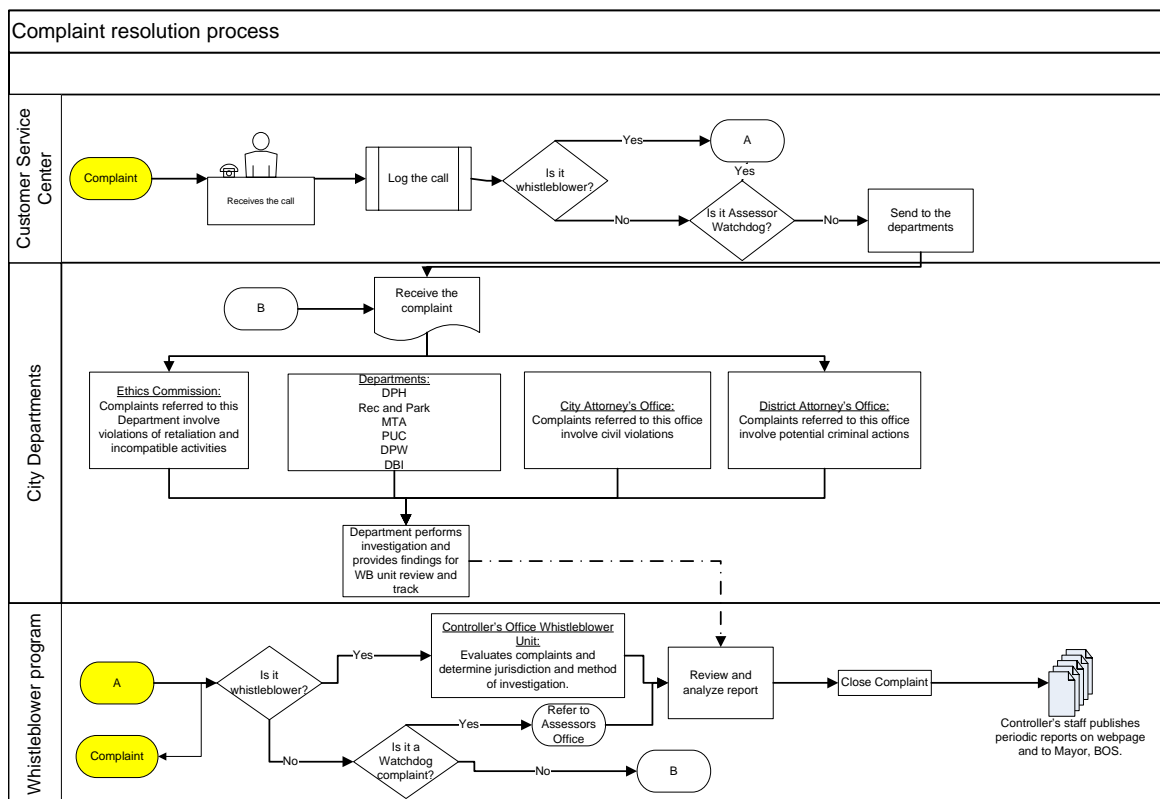
To complete the review requested by Chair Simmons, I reviewed both the authorizing legislation (Appendix F to the charter and State Government Code section 53087.6) creating a Whistleblower Program) and the Controller's Whistleblower Policy and Procedures Guide with City staff.

**Whistleblower Process.**

Policy and Procedures Manual. The Controller has established a Whistleblower Program Policy and Procedures Manual covering the various aspects of the Program and including goals and objectives and examples of best practice standards in Civic Accountability, communications, engaging the public and responsive organizational values to advance the mission of the Program.

**Staffing & General Responsibilities:**

The Whistleblower Program is part of the Controller's City Services Auditor (CSA) organization and is staffed by employees in various auditor and supervisory classifications. The CSA publicizes the hotline and whistleblower website through various means including descriptions of the program in new employee orientation and supervisory training programs. A flow chart showing the steps followed by the Controller's Whistleblower process follows.



### **Complaint Receipt:**

The Whistleblower Program receives complaints from various sources including the City 311 call center, letters, emails, phone calls, and walk-ins. Each complaint is assigned a unique tracking number and evaluated to determine the risk profile of the complaint. The Whistleblower Program team then either refers the complaint to the relevant City department for investigation or investigates it internally.

**Complaint receipt process:** The complaint is acknowledged within 5 days by a simple email to the complainant. The Whistleblower Team then determines jurisdiction and, where applicable, refers the complaint to the proper authority or City department or agency. Once the investigator finds that complaint is valid, the investigator determines if the complaint is complete, i.e., there is a documented explanation of what happened, an identified respondent and sufficient information to understand the facts.

If it is necessary to contact the complainant the investigator usually sends correspondence which includes the case number, citation of the statute or policy under which the investigation is being conducted, a clear description of the information requested and a deadline for responding.

### **Complaint Resolution Process:**

Once a complaint has been received it is entered in the Whistleblower System database. Each complaint is assigned a unique tracking number. An evaluation is performed to determine the relevant risk level of the complaint and the complaint is then either referred to the relevant department or internally investigated.

The CSA Policy and Procedures Manual has numerous suggestions on how to interview city employees and others, admonitions to stick strictly to facts and to not permit “off the record” comments.

### **Complaint Resolution Process, Reporting:**

If a complaint is found to have merit, an investigative report is prepared. The investigative report should detail allegations, how the investigation was conducted, a response from the respondent or, if the

respondent does not respond, the investigator's efforts to elicit a response. A conclusion should analyze the facts presented and validity of the allegations followed by a recommendation how the department can minimize repetition of the violation by ensuring that adequate controls are in place.

Complaint Closures can be either "No Violation" or "Violation" letter of findings. In both cases the department is notified. The complainant is notified through the Controller's Whistleblower web site.

### **Other Investigative Agencies:**

Ethics Commission investigates possible violations of governmental ethics laws and other laws, regulations and rules governing the conduct of City officers and employees.

City Attorney investigates claims made against the City.

District Attorney investigates criminal allegations.

Police Department investigates criminal allegations such as illegal drug use.

Office of Citizen Complaints investigates complaints against San Francisco Police Officers.

Human Services Agency investigates all welfare related complaints.

Administrative Services Department receives reports of misuse of City vehicles.

Building Inspection Department receives reports of residential maintenance and structural hazards.

Mayor's Disability Office receives reports of violations of disability access.

Municipal Transportation Agency (MUNI) can receive complaints regarding MUNI service.

Sunshine Ordinance Task Force receives complaints related to access to public records.

### **A review of sample Whistleblower cases follows.**

After review and discussion of Program goals and objectives and a review of tracking mechanisms, I requested and received samples of actual Whistleblower cases and documentation to determine if the cases followed the guidelines and protocols of the Guide.

I reviewed three cases in detail: One was deemed high risk, one medium risk and one low risk. Risk is defined as the relative materiality of possible loss to the City. In the City Policy and Procedures Guide, the higher the risk category, the more potential loss to the City or the higher level of employee involved in the possible loss. In all cases I found documentation of the filing, investigation and closure to be in accord with adopted standards for the Whistleblower Program. The cases involved possible mismanagement of grant funds [high], an inappropriate participation in a hiring interview [medium] and an allegation that a city vehicle was wasting fuel [low]. The investigations were well documented, promptly completed and, to me, seemed reasonable and thorough, both in the investigation and conclusions reached.

A brief recap of each of the cases follows. I have attempted to adhere to the privacy requirements of both City and State Law, showing briefly the steps taken by staff to investigate and resolve the case without breaching privacy constraints even though the detail provided to me as a CGOGOC Member did include some confidential information..

**High Risk** (defined as potential loss to the city is greater than \$50,000 and/or allegation of wrongdoing involved Deputy Director or above):

Complaint alleges mismanagement of grant funds and contract award.

Received 8/19/2010. Audit staff met with Director of Department concerned. Checked with various Controller's financial personnel over several days as well as Department of Human Resources (DHR) personnel to validate documents and determine if complaint might come under jurisdiction of DHR. DHR had negative findings as to their jurisdiction. Staff reviewed contract in question and also reviewed how funds were set up on City books, and asked for documentation on allowable uses of funds in question. They reviewed use of grant funds to support alleged mismanagement with the responsible Department Head. Department Head concluded that grant funds were used in accordance with grant and with Controller's approval.

Complaint closed 1/11/2011

**Medium Risk** (defined as allegation of wrongdoing involving low/mid-level management):

Complaint alleged biased personnel interview.

Received 1/18/2011. Alleges manager participated in personnel hiring interview in which a relative was competing for position. Whistleblower personnel contacted department for a full review of the complaint. An extensive response from department concluded that, while the manager sat in the interview the manager did not rate the related individual and, furthermore, the relative was not ranked high enough for hire.

The Department also replied that the manager has been counseled "that direct participation in selection processes for relatives and close friends is unacceptable and will not be tolerated."

Complaint closed 2/18/2011

**Low Risk** (defined as measurable loss to the City is less than \$10,000 and/or allegation of wrongdoing involves low-level employees.):

Alleged misuse of city vehicle wasting city assets.

Received 1/27/2011. Complaint alleged that city vehicle kept motor running while parked for more than one hour. Staff verified vehicle number with Purchaser's Central Shops. Then they contacted relevant department and found that the vehicle in question was an emergency response vehicle that needed to keep its motor running to maintain contact with central dispatch and be available for emergency response. During the time in question, the vehicle had not been ordered to respond to an emergency and the idling motor was thus in conformance with department guidelines.

Complaint closed 2/4/2011

Controller’s Whistleblower Complaint Resolution Process.

