

CLATSOP COUNTY ADMINISTRATIVE POLICY A-7

SUBJECT: REPORTING OF IMPROPER GOVERNMENTAL CONDUCT

DATE: June 24, 2020

The purpose of this policy is to reinforce an organizational culture that provides:

1. The opportunity for employees, officials, contractors and the public to report concerns and/or complaints;
2. Fair and timely investigation and appropriate response;
3. Complainants are free from retaliation; and
4. Where appropriate, complainants are provided confidentiality.

Applicability: This policy applies to all Clatsop County employees, contract employees, applicants for employment, contractors and authorized volunteer positions.

This policy shall apply to all reports of improper governmental conduct received through the County's Hotline or by any other means.

Definitions

"Abuse" means the intentional, wrongful or improper use or destruction of County resources, or seriously improper practice that does not involve prosecutable fraud. Abuse can include the excessive or improper use of an employee's or official's position in a manner other than its rightful or legal use. Examples include but are not limited to failure to report damage to County equipment or property; using one's position in a County department to gain an advantage over another County resident when conducting personal business in another County department; serious abuse of County time such as significant unauthorized time away from work or significant use of County time for personal business; abusing the system of travel reimbursement; receiving favors for awarding contracts to certain vendors.

"Corruption" means employees or officials wrongfully using their influence in a business transaction to procure some benefit for themselves or another person, contrary to their duty to their employer or the rights of another. Examples include but are not limited to accepting kickbacks; engaging in conflicts of interest; bid rigging; economic extortion; illegal gratuities.

"Disciplinary action" means any adverse action, including dismissal, demotion, transfer, reassignment, supervisory reprimand, warning of possible dismissal or withholding of work, whether or not the action affects or will affect employee compensation.

"Financial Statement Fraud" means intentional misstatements, omissions or disclosures in financial statements designed to deceive financial statement users. Fraudulent financial reporting often involves management override of controls that otherwise may appear to be operating effectively. Examples may include overstating revenues or understating liabilities or expenses. Specific examples include but are not limited to manipulation, falsification or alteration of accounting records or supporting documents from which financial statements are prepared; misrepresentation of or an intentional omission from the financial statements of events, transactions, or other significant information; intentional misapplication of accounting principles relating to amounts, classification, manner of presentation or disclosure.

"Fraud" means a dishonest and deliberate course of action that results in the obtaining of money, property, or an advantage to which County employees or officials committing the action would not normally be entitled. Fraud includes the intentional misleading or deceitful conduct that deprives the County of its resources or rights. There are three categories of fraud: (1) Financial Statement Fraud, (2) Misappropriation of Assets, and (3) Corruption. Examples include but are not limited to falsifying financial records to cover up theft; theft or misuse of County money, equipment supplies or materials; intentionally misrepresenting the costs of goods or services provided; falsifying payroll information; use of County equipment or property for personal gain; submitting false claims for reimbursement; soliciting or accepting a bribe or a kickback; intentional use of false weights or measures.

"Improper governmental conduct" means conduct or actions of County employees, officials, contractors, or agents that constitute waste, fraud or abuse.

"Investigating employee or official" means that employee or official who is in a position of authority, pursuant to this policy, to investigate a complaint or concern of alleged improper governmental conduct.

"Misappropriation of assets" means the theft of an entity's assets that causes the financial statements not to be presented in conformity with generally accepted accounting principles. Misappropriation of assets includes false or misleading records or documents, possibly created by circumventing controls. Examples include but are not limited to embezzling funds; theft of assets; causing an entity to pay for goods and services that have not been received; skimming revenues; payroll fraud.

"Mismanagement" means serious County misconduct having the effect of actually or potentially undermining the County's ability to fulfill its public mission.

"Reasonably believes is evidence" means, in addition to other circumstances bearing on the reasonableness of the belief, that the employee has personal knowledge of facts tending to establish the violation of law, rule or regulation, or the existence of

mismanagement, abuse of authority, gross waste of funds, or substantial and specific danger to public health or safety.

"Receiving employee or official" means, that employee or official who receives a report, complaint or concern of improper governmental conduct.

"Reckless disregard for its truth or falsity" means a conscious disregard of a substantial and justifiable risk that the information disclosed is false.

"Reporting Employee" means, an employee who reasonably believes they have evidence of improper governmental conduct.

"Substantial and specific danger" means a specified risk of serious injury, illness, peril or loss, to which the exposure of the public is a gross deviation from the standard of care or competence which a reasonable person would observe in the same situation.

"Waste" means the needless, careless or extravagant expenditure of County funds, incurring of unnecessary expenses, or mismanagement of County resources or property. Waste doesn't necessarily involve private use or personal gain, but almost always signifies poor management decisions, practices or controls. Examples include but are not limited to purchase of unneeded supplies or equipment; purchase of goods at inflated prices; failure to reuse or recycle major resources or reduce waste generation.

I. POLICY

A guiding principle for Clatsop County is for all employees to commit themselves to the highest standards of ethical conduct and to accept full accountability for their actions. In keeping with this guiding principle, Clatsop County encourages its employees, officials, contractors and members of the public to report any known or suspected improper governmental conduct to a responsible County representative.

1. Reporting Improper Governmental Conduct

- 1.1 Any County employee, official, contractor or member of the public who discloses information that they reasonably believe is evidence of improper governmental conduct shall not be retaliated against and, if a County employee, shall not be subjected to or threatened with disciplinary action for the disclosure.
- 1.2 A reporting employee, official, contractor or member of the public may disclose any allegation, concern, or complaint of improper governmental conduct (a) by utilizing the County's Hotline; or (b) reporting an allegation of improper governmental conduct that may also be a violation of the State Code of Ethics (ORS Chapter 244) to the Oregon Government Ethics Commission.

- 1.3 Any official, contractor or member of the public who reasonably believes that he or she has evidence of improper governmental conduct may report it to the Clatsop County Human Resources Director. All reports of improper governmental conduct received from officials, contractors, or members of the public shall be processed and investigated in accordance with the provisions of Section 2 herein.
- 1.4 An employee who reasonably believes he or she has evidence of improper governmental conduct shall report it in the following manner:
 - 1.4.1. First to the employee's supervisor. Where the reporting employee reasonably believes that the improper governmental conduct involves the supervisor or there may not be a fair and impartial investigation or there could be retaliation for reporting, the reporting employee shall report the alleged improper governmental conduct directly to his or her department director; if the reporting employee reasonably believes the alleged improper governmental conduct should not be reported to his or her department director for any of the reasons set forth above, the reporting employee shall report the conduct to the County Manager; and if the reporting employee reasonably believes the improper governmental conduct should not be reported to the County Manager for any of the reasons set forth above, the reporting employee shall report the conduct to the Chair of the Board of County Commissioners.
 - 1.4.2. Where the reporting employee reasonably believes there is an imminent likelihood of substantial and specific danger if action is not taken immediately, the reporting employee may report the alleged improper governmental conduct directly to that County employee or official having authority over the matter and not personally involved in the alleged improper governmental conduct.
 - 1.4.3. Where the alleged improper governmental conduct is reasonably believed to have been committed by a County official appointed by the Board of Commissioners, the reporting employee shall report the conduct to the Chair of the Board of County Commissioners.
 - 1.4.4. Where the alleged improper governmental conduct is reasonably believed to have been committed by an elected County official, the reporting employee shall report the conduct to the Chair of the Board of County Commissioners or a non-culpable Board member.

- 1.4.5. Where the reporting employee reasonably believes the County Commission has culpability in the alleged improper governmental conduct, the reporting employee may report the conduct to the Hotline or State Ethics Commission.

2. Investigation

- 2.1 The County employee or official receiving the report of improper governmental conduct shall be responsible for reporting the matter to the Human Resources Director. The HR Director shall create a log in the County's Hotline documenting the date, time, and subject matter of any report of improper conduct that is received. The HR Director, with input from the County Manager, Assistant County Manager and County Counsel shall be responsible for determining the manner in which the allegations of improper governmental conduct will be investigated. Except as otherwise required pursuant to sections 2.1.2 and 2.1.3, the investigation shall remain confidential until such time as the written report required under subsection 2.4 is completed.
 - 2.1.1. The HR Director may elect to investigate the allegations by him or herself; assign the investigation to a subordinate employee; request that the investigation be conducted by the receiving employee's supervisor or department director; request the investigation be conducted by another office, agency, or department in the County; or, as provided in section 2.1.5, below, utilize the services of an outside agency.
 - 2.1.2. When an investigating employee or official determines during an investigation that fraud or other criminal activity may be occurring or may have occurred, the investigating employee or official shall notify the Human Resources Director. The Human Resources Director shall notify the appropriate law enforcement agency of the potential fraud or other criminal activity.
 - 2.1.3. When an investigating employee or official determines during an investigation that a violation of any provision of ORS chapter 244 may be occurring or may have occurred, the investigating employee or official shall notify the Human Resources Director. The Human Resources Director shall notify Oregon Government Ethics Commission of the potential violation.
 - 2.1.4. Upon providing notice pursuant to sections 2.1.2 or 2.1.3 herein, the investigating employee or official may elect to suspend the investigation, pending completion of the referral agency's review of the matter.

- 2.1.5. If the HR Director reasonably believes that an investigation of a non-criminal matter cannot be conducted in an impartial, fair or complete manner by him/herself or any office, employee or official in the County, upon approval of the County Manager, County Counsel or County Board Chair, the matter may be referred to an outside public agency willing to accept responsibility for the investigation (such as another county's Administrative Office or Office of County Counsel).
- 2.2 Any investigation conducted pursuant to this policy shall be done in a timely, impartial, and fair manner. An employee who is the subject of an investigation of improper governmental conduct (and therefore may be subject to discipline) may have certain rights afforded pursuant to County Personnel Rules, a collective bargaining agreement and/or state or federal law.
- 2.3 The investigating employee or official shall confer with the Office of County Counsel pertaining to such rights. The investigation shall be done in a manner that will not result in any unreasonable embarrassment to the subject(s) of the investigation or any witnesses. All County employees and officials shall cooperate in any investigation.
- 2.4 The investigating employee or official, upon conclusion of the investigation, shall prepare a written report setting forth the allegations and findings. The investigating employee or official shall present his or her report to the Human Resources Director and the non-culpable County department head having authority over the affairs being investigated; or, in the event the allegations involve a department head, the report shall be presented to the County Manager; or, in the event the allegations involve the County Manager, the report shall be presented to the Chair of the County Board of County Commissioners. A copy of any written report finding that that employees, officials, or contractors of the County have been involved in activities that constitute waste, fraud or abuse shall be provided to non- culpable members of the Board of County Commissioners.

3. Response to Findings of Improper Governmental Conduct

- 3.1 The non-culpable County authority receiving the investigation findings shall take necessary and appropriate action. Such action may include, but is not limited to, initiating the implementation of discipline, modifying department procedures, and/or presenting the report to the appropriate County employee or official.
- 3.2 Should an investigation find that improper governmental conduct has occurred, the reporting employee, upon request, shall be

provided with a copy of the written report, except that any personnel action(s) taken as a result of the investigation may be kept confidential. Any information provided to the reporting employee, that may be considered confidential, shall not be publicly disclosed by the employee.

- 3.3 Upon completion of the investigation, the written report shall be subject to disclosure as a public record under ORS 192.410 to 192.505 unless an exemption from disclosure set forth in a provision state or federal law applies to the records, except that the identity of the reporting individual or employee shall remain confidential.

4. Responsibility of Reporting Employee/Protection Against Retaliation/Confidentiality

- 4.1 County officials and employees are prohibited from retaliating, including the imposition of disciplinary action, against a member of the public or any Clatsop County employee because he or she has, in good faith, reported improper governmental conduct. However, employees may be subjected to discipline if the information disclosed by the employee is known by the employee to be false, if the employee discloses the information with reckless disregard for its truth or falsity, or if the information disclosed relates to the employee's own violations, mismanagement, gross waste of funds, abuse of authority or endangerment of the public health or safety.
- 4.2 An employee who believes he or she has been retaliated against for reporting improper governmental conduct should advise their supervisor, the Human Resources Director or County Manager. The County official receiving a report of retaliation shall take appropriate action to investigate and address complaints of retaliation. A County employee who has been found to have retaliated against an employee for reporting, in good faith, improper governmental conduct shall be subject to discipline.
- 4.3 Notwithstanding the above, any employee who believes he/she has been retaliated against for the reporting of improper government conduct may bring a civil action as provided by ORS 659A.215.
- 4.4 The names of employees or other individuals reporting allegations of improper governmental conduct shall be kept confidential unless waived by the subject employee or reporting individual. The County employee receiving the report shall take reasonable steps to maintain confidentiality of the reporting employee. Unless, otherwise required by law

- 4.4.1. The identity of the reporting employee or other reporting individual described in this policy, shall not be disclosed, during the investigation, without the written consent of the reporting employee; and
- 4.4.2. No supervisory or management employee of the County shall reveal to an employee accused of improper governmental conduct the identity of the reporting employee or other reporting individual.

5. Whistleblower Protection (ORS 659A.200 and 659A.203)

- 5.1. No employee of Clatsop County shall be prohibited from discussing, in response to an official request, either specifically or generally with any member of the Legislative Assembly, legislative committee staff acting under direction of a member of the Legislative Assembly, any member of the elected governing body of a political subdivision in the state or the activities of:
 - 5.1.1. The state or any agency or political subdivision in the state; or
 - 5.1.2. Any person authorized to act on behalf of the state or any agency or political subdivision in the state.
- 5.2. No employee of Clatsop County shall be disciplined or threatened with discipline for disclosing any information that the employee reasonably believes is evidence of:
 - 5.2.1. A violation of any federal or state law, rule or regulation by the state, agency or political subdivision;
 - 5.2.2. Mismanagement, gross waste of funds or abuse of authority or substantial and specific danger to public health and safety resulting from action of the state, agency or political subdivision; or
 - 5.2.3. Subject to ORS 659A.212(2), the fact that a person receiving services, benefits or assistance from the State or agency or subdivision, is subject to a felony or misdemeanor warrant for arrest issued by the state of Oregon, any other state, the federal government, or any territory, commonwealth governmental instrumentality of the United States.
- 5.3. No employee of Clatsop County shall be required to give notice prior to making any disclosure under Sections 5.1 and 5.2.

- 5.4. No employee of Clatsop County shall be discouraged, restrained, dissuaded, coerced, prevented or otherwise interfered with when making disclosures or engaging in discussions of matters protected under Sections 5.1 and 5.2.
- 5.5. An employee's good faith and objectively reasonable belief of a violation of federal, state or local law, rule or regulation by the employer shall be an affirmative defense to a civil or criminal charge related to the disclosure by the employee of lawfully accessed information related to the violation, including information that is exempt from disclosure as provided in ORS 192.501 to 192.505 or by Clatsop County policy, if the information is provided to:
 - 5.5.1. A state or federal regulatory agency;
 - 5.5.2. A law enforcement agency;
 - 5.5.3. A manager employed by the County;
 - 5.5.4. An attorney licensed to practice law in the state of Oregon if a confidential communication is made in connection with the alleged violation described in this Section 5.5 and in furtherance of the rendition of legal services to the employee that are subject to ORS 40.225.
- 5.6. An employee may not assert the affirmative defense described in Section 5.5 if the information:
 - 5.6.1. Is disclosed or re-disclosed by the employee or at the employee's direction to a party other than the parties listed in Section 5.5;
 - 5.6.2. Is stated in a commercial exclusive negotiating agreement with Clatsop County, provided that the agreement is not related to the employee's employment with Clatsop County; or
 - 5.6.3. Is stated in a commercial nondisclosure agreement with Clatsop County, provided that the agreement is not related to the employee's employment with Clatsop County.
- 5.7. The affirmative defense described in Section 5.5 is available to an employee who discloses information related to an alleged violation by a coworker or supervisor described in Section 5.5 if the disclosure relates to the course and scope of employment of the coworker or supervisor.

- 5.8. The affirmative defense described in Section 5.5 may not be asserted by an employee who is an attorney or by an employee who is not an attorney but who is employed, retained, supervised or directed by an attorney if the information disclosed pursuant to Section 5.5 is related to the representation of a client.
- 5.9. Disclosure made under Section 5.2, 5.3, and 5.5 herein are subject to the rules of professional conduct established pursuant to ORS 9.490.
- 5.10. Subject to the rules of professional conduct established pursuant to ORS 9.490, a public employee who is an attorney may report to the Attorney General the employee's knowledge of a violation of federal, state or local law, rule or regulation by Clatsop County.
- 5.11. Disclosure of information pursuant to Section 5.5 does not waive the attorney-client privilege or affect the applicability of any exemption from disclosure of a public record under ORS 192.501 to 192.505.
- 5.12. Notwithstanding Section 5.5, information protected from disclosure under federal law, including but not limited to the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), may be disclosed only in accordance with federal law.

6. Other Opportunities for Reporting.

The policies specified herein are for the purpose of reporting allegations of improper governmental conduct. These policies are not intended to replace other opportunities for employees to bring complaints or grievances pertaining to their employment. Specifically, County employees maintain their rights pursuant to personnel rules (Article 5) and/or a collective bargaining agreement to appeal imposition of discipline; their right pursuant to personnel rules to appeal County policies or actions (Article 10); and any rights they/may have pursuant to federal and state law to present civil complaints.

7. Exceptions.

Exceptions may only be granted by the Clatsop County Board of Commissioners unless such authority has been delegated to the County Manager.

8. Implementation:

Elected officials and department directors are expected to be knowledgeable of, and shall be responsible for, implementing this policy within their respective departments. Observance of this policy is mandatory for all County employees and violation may result in disciplinary action (up to and including termination).

Any sustained violations of this policy resulting from an investigation conducted pursuant to Section 2 of this policy or from an Administrative Review or Administrative Investigation shall be logged into the County's EthicsPoint computer system and reported to non- culpable members of the Board of County Commissioners.

9. Periodic Review:

This policy shall be reviewed by the County Manager's Office at least every three years, or more often if needed, and updated as necessary.

