



ANNUAL REPORT

TO THE GOVERNOR AND THE LEGISLATURE

WHISTLEBLOWER RETALIATION COMPLAINTS

COMPLAINTS OF RETALIATION FOR THE
DISCLOSURE OF INFORMATION BY PUBLIC
EMPLOYEES

January 1, 2006 through December 31, 2006

Prepared By The

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ANNUAL REPORT TO THE GOVERNOR AND THE LEGISLATURE COMPLAINTS OF RETALIATION FOR THE DISCLOSURE OF INFORMATION BY PUBLIC EMPLOYEES (WHISTLEBLOWER RETALIATION)

June 30, 2007

Introduction

Government Code section 19683(f) provides, "In order for the Governor and the Legislature to determine the need to continue or modify state personnel procedures as they relate to the investigations of reprisals or retaliation for the disclosure of information by public employees, the State Personnel Board, by June 30 of each year¹, shall submit a report to the Governor and the Legislature regarding complaints filed, hearings held, and legal actions taken pursuant to this section." This report is prepared by the State Personnel Board (SPB) for the calendar year of January 1, 2006 through December 31, 2006.

Background

Protection for state employees from retaliation for having reported improper governmental activities was first provided in 1985. At that time, the SPB was assigned responsibility for investigation of complaints of whistleblower retaliation.

Over the past years the laws relative to whistleblowers have been amended to expand the protections granted to whistleblowers. There were amendments in 1987; 2000; 2001; and 2004. In 2002, SPB established rules through the California Code of Regulations (CCRs) to implement the whistleblower laws.

Effective March 8, 2006, further modifications to the whistleblower complaint rules were made, including the requirement that the Executive Officer refer the case for investigation, or schedule the case for an informal hearing before an administrative law judge.

Information

Whistleblowing is defined as either disclosing information that a state or community college employee, or applicant for state or community college employment, reasonably believes is evidence of an improper governmental activity, or refusing to obey an illegal order or directive.

Three agencies play major roles in whistleblower retaliation, the Bureau of State Audits (BSA), the Office of the Inspector General (OIG) and the SPB.

¹ Six reports were produced between 1987 and 1992. In 1992, Chapter 710 legislation (Government Code section 7550.5) instituted a moratorium on most reports to the Legislature. The moratorium was renewed in 1994 and 1996, and became inoperative on October 1, 1999. After the moratorium was finally repealed as of January 1, 2000, Whistleblower Retaliation Reports were again produced for calendar years 2000, 2001, 2002, 2003, 2004, and 2005.

BSA accepts complaints in reference to improper governmental activities. BSA is the investigative agency that has jurisdiction to investigate the underlying improper governmental activity.

OIG's specific responsibility in whistleblower retaliation complaints is to investigate complaints of retaliation against those who report misconduct on the part of state correctional agencies and employees. OIG can, with the approval of the complaining employee, forward its investigative findings to the SPB in support of the complaining employee's request and ask the SPB to bring disciplinary action against employees who retaliate against whistleblowers if the department does not. As an independent agency, OIG reports to the Governor. As a result of the audits, reviews, and investigations, OIG provides impartial analysis and policy recommendations to the Governor, the Legislature, and correctional administrators.

SPB is the adjudicatory body that hears and decides complaints of whistleblower retaliation. SPB accepts the complaints of the state civil service or community college employee or applicant who believe s/he has been subjected to improper personnel action, threatened with an improper personnel action, or that such action is based, in part, on the fact s/he disclosed improper governmental activity or disclosed a refusal to obey an illegal order or directive.

The SPB is considered to have jurisdiction in Whistleblower Retaliation cases when all of the requirements listed below are met:

- A state or community college applicant or employee files the complaint.
- The complaint states a prima facie case of retaliation.
- The appeal is filed within one year of the most recent act or reprisal.
- A perjury statement is included with the complaint.

SPB does not accept filed appeals when any of the above requirements are not met or the SPB does not have jurisdiction over the employing entity (e.g. University of California, California State University).

Complaint Activity

Sixty whistleblower retaliation complaints were filed in the calendar year 2006, which is a 1.64 percent decrease from 2005 (61 complaints received). Of the 60 complaints filed this year, 45 of those complaints were accepted.

Of those 45 cases, 9 were "denied" or "dismissed", 26 are "pending decision," 6 cases resulted in adopted stipulations and 4 cases were withdrawn. Of the 26 "pending decision" cases, 9 cases were scheduled for evidentiary hearing and are pending decision before an Administrative Law Judge and 17 cases are pending results from an informal hearing. A detailed complaint activity chart appears on page 3.

**SPB Whistleblower Retaliation Complaints
Activity Report
(January 2006 – December 2006)**

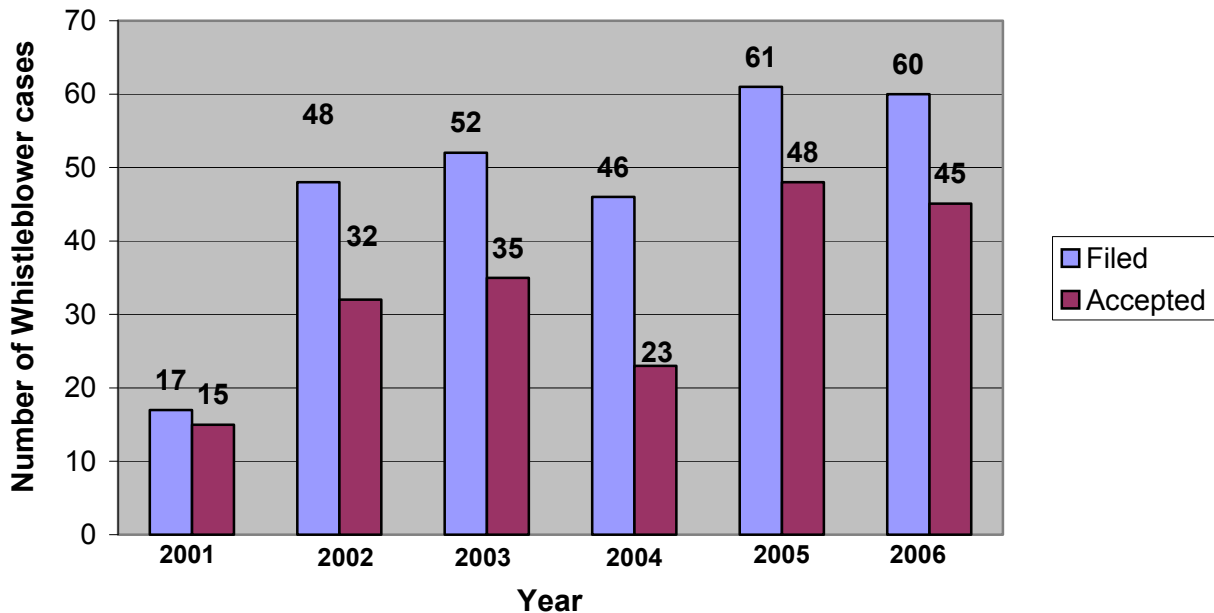
I. Whistleblower Appeals filed

Total Filed	Appeals Not Accepted ²	Appeals Accepted
60	15	45

II. Disposition of Whistleblower Appeals Accepted

Denied/ Dismissed	Pending Decision	Stipulated Agreement	Withdrawn	Total
9	26	6	4	45

III. Comparison of Whistleblower Appeals filed each year



² SPB does not accept filed appeals when: (a) The complaint fails to state a prima facie case of retaliation; (b) the complaint is not filed within one year of the most recent act of reprisal; (c) the complaint is not signed by penalty of perjury; or (d) the SPB does not have jurisdiction over the employing entity (e.g. University of California, California State University).

**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2006**

	Appeal Date	Case #	Status	Department	Consolidated ³	RDAT ⁴	Inf. Hearing/ Investigation
1	2/3/2006	06-0377	Appeal Not Accepted	Corrections	N	Y	N/A
2	3/6/2006	06-0616	Appeal Not Accepted	Alcohol and Drug Program	N	Y	Informal Hearing
3	3/16/2006	06-0714	Appeal Not Accepted	Corrections	N	Y	Informal Hearing
4	4/27/2006	06-1592	Appeal Not Accepted	Health Services	N	Y	N/A
5	6/6/2006	06-1790	Appeal Not Accepted	Parks and Recreation	N	Y	N/A
6	6/9/2006	06-1802	Appeal Not Accepted	Justice	N	Y	N/A
7	8/1/2006	06-2722	Appeal Not Accepted	Fish and Game	N	Y	N/A
8	8/10/2006	06-2726	Appeal Not Accepted	Corrections	N	Y	N/A

³ AA: Whistleblower Retaliation Complaint consolidated with prior Adverse Action appeal.
DC: Whistleblower Retaliation Complaint consolidated with prior Discrimination Complaint appeal.
RA: Whistleblower Retaliation Complaint consolidated with prior Reasonable Accommodation
Complaint appeal.
WB: Whistleblower Retaliation Complaint consolidated with prior Whistleblower Retaliation complaint appeal.

⁴ RDAT: indicates whether complainant requested discipline action be taken.

**Detailed Listing – Whistleblower Retaliation Complaints
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	Appeal Date	Case #	Status	Department	Consolidated ³	RDAT ⁴	Inf. Hearing/ Investigation
9	9/2/2006	06-2904	Appeal Not Accepted	Corrections	N	Y	N/A
10	10/20/2006	06-3741	Appeal Not Accepted	Corrections	N	Y	N/A
11	11/3/2006	06-3966	Appeal Not Accepted	Corrections	N	Y	N/A
12	11/12/2006	06-3967	Appeal Not Accepted	Highway Patrol	N	Y	N/A
13	11/18/2006	06-4149	Appeal Not Accepted	Social Services	N	Y	Informal Hearing
14	12/7/2006	06-4260	Appeal Not Accepted	Corrections	N	Y	N/A
15	12/12/2006	06-4282	Appeal Not Accepted	Corrections	N	Y	N/A
16	2/25/2006	06-0602	Notice of Finding - Deny	Public Utilities Commission	N	Y	Informal Hearing

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17	7/31/2006	06-2440	Notice of Finding - Deny	General Services	N	Y	Informal Hearing
18	8/3/2006	06-2879	Notice of Finding - Deny	Toxic Substances Control	N	Y	N/A
19	9/25/2006	06-3321	Notice of Finding - Deny	Highway Patrol	N	Y	N/A
20	1/25/2006	06-0217	Notice of Finding - Dismiss	Lottery Commission, California State	N	Y	Informal Hearing
21	2/2/2006	06-0345	Notice of Finding - Dismiss	Corrections	N	Y	N/A
22	2/3/2006	06-0319	Notice of Finding - Dismiss	Consumer Affairs	N	Y	Informal Hearing
23	4/7/2006	06-1077	Notice of Finding - Dismiss	Justice	Y - AA (06-0740)	Y	N/A
24	7/10/2006	06-2248	Notice of Finding - Dismiss	Corrections	N	Y	N/A

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25	5/9/2006	06-1438	Pending decision	Equalization	Y - AA (05-2715)	Y	N/A
26	5/30/2006	06-1652	Pending decision	Social Services	Y - WB, WB (04-0433,05-0444)	Y	N/A
27	6/29/2006	06-2063	Pending decision	General Services	Y - AA (06-0881E)	Y	Informal Hearing
28	7/11/2006	06-2282	Pending decision	Corrections	Y - DC (06-2824)	Y	Informal Hearing
29	7/25/2006	06-2374	Pending decision	Social Services	Y - DC, WB (04-0432, 05-0443)	Y	N/A
30	7/28/2006	06-2463	Pending decision	Transportation	Y - AA (06-0729)	Y	N/A
31	8/30/2006	06-2863	Pending decision	General Services	Y - AA, RTFC (06-1835,06-2587)	Y	N/A
32	11/14/2006	06-3969	Pending decision	Energy Res. Conserv. & Dev. Comm.	Y - AA (06-1096)	Y	N/A

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33	11/20/2006	06-4040	Pending decision	Veterans Affairs	Y - AA (06-2595)	Y	N/A
34	5/4/2006	06-1378	Pending Decision	Rehabilitation	N	Y	Informal Hearing
35	5/25/2006	06-1694	Pending decision	Health Services	N	Y	Informal Hearing
36	6/5/2006	06-1763	Pending decision	Corrections	N	Y	Informal Hearing
37	6/19/2006	06-1942	Pending decision	Feather River Community College	N	Y	Informal Hearing
38	6/22/2006	06-1979	Pending decision	Feather River Community College	N	Y	Informal Hearing
39	6/28/2006	06-2104	Pending decision	Education	N	Y	N/A
40	6/29/2006	06-2186	Pending decision	Feather River Community College	N	Y	N/A

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41	8/7/2006	06-2708	Pending decision	Corrections	N	Y	Informal Hearing
42	8/22/2006	06-2825	Pending decision	Corrections	N	Y	Informal Hearing
43	8/23/2006	06-2897	Pending decision	Health Services	N	Y	Informal Hearing
44	9/25/2006	06-3335	Pending decision	Corrections	N	Y	Informal Hearing
45	10/2/2006	06-3481	Pending decision	Corrections	N	Y	Informal Hearing
46	10/24/2006	06-3807	Pending decision	Corrections	N	Y	Informal Hearing
47	11/3/2006	06-3862	Pending decision	Corrections	N	Y	Informal Hearing
48	11/16/2006	06-4027	Pending decision	Parks and Recreation	N	Y	Informal Hearing

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49	12/7/2006	06-4259	Pending decision	General Services	N	Y	Informal Hearing
50	12/26/2006	06-4314	Pending decision	Corrections	N	Y	Informal Hearing
51	4/5/2006	06-0981	Stip, XO Adopts	Veterans Affairs	N	Y	Informal Hearing
52	4/19/2006	06-1187	Stip, XO Adopts	Transportation	N	Y	Informal Hearing
53	5/5/2006	06-1402	Stip, XO Adopts	Forestry and Fire Protection	N	Y	Informal Hearing
54	6/30/2006	06-2636	Stip, XO Adopts	Corrections	Y - AA (06-0865)	Y	N/A
55	10/17/2006	06-3673	Stip, XO Adopts	Corrections	N	Y	Informal Hearing

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56	10/24/2006	06-3936	Stip, XO Adopts	Forestry and Fire Protection	Y - AA (05-2641)	Y	N/A
57	3/1/2006	06-0600	Withdrawn	Franchise Tax Board	N	Y	Informal Hearing
58	5/8/2006	06-1432	Withdrawn	Corrections	N	Y	Informal Hearing
59	7/26/2006	06-2421	Withdrawn	Franchise Tax Board	Y - AA (05-4219)	Y	N/A
60	7/31/2006	06-2475	Withdrawn	Employment Development Dept	N	Y	N/A

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