

Interoffice Memorandum

February 11, 2022

To: Katie Bennett
Acting Director, Human Resources

From: Michael Wood
Chief Deputy Commissioner

Subject: Disposition of February 4 Conduct Complaint

This document reflects the discussions we have had, including those you had with former Chief Deputy Mark Dietzler and me in my former role as Deputy Commissioner for Operations. It refers to the written e-mail complaint you received on Friday, February 4, 2022, as well as the similar document received by Mr. Dietzler and Bryon Welch, Deputy Commissioner for Policy & Legislative Affairs. Those documents further elaborated on the initial telephone complaint you received on February 3.

The essential nature of the complaint is that the Commissioner's actions and behavior toward staff are inappropriate in a number of respects. The complaints allege several specific examples, but generally focus on a series of interactions last week.

As we have discussed, the complaint appears to be made in good faith under RCW 42.40. However, whether the complaint merits a referral to the State Auditor's Office as "an assertion of improper governmental action" requires a closer review of the issues.

The definition of "Improper governmental action" in reads in RCW 42.40.020(6)(a) reads as follows:

(6)(a) "Improper governmental action" means any action by an employee undertaken in the performance of the employee's official duties:

(i) Which is a gross waste of public funds or resources as defined in this section;

(ii) Which is in violation of federal or state law or rule, if the violation is not merely technical or of a minimum nature;

(iii) Which is of substantial and specific danger to the public health or safety;

(iv) Which is gross mismanagement;

(v) Which prevents the dissemination of scientific opinion or alters technical findings without scientifically valid justification, unless state law or a common law privilege prohibits disclosure. This provision is not meant to preclude the discretion of agency management to adopt a particular scientific opinion or technical finding from among differing opinions or technical findings to the exclusion of other scientific opinions or technical findings. Nothing in this subsection prevents or impairs a state agency's or public official's ability to manage its public resources or its employees in the performance of their official job duties. This subsection does not apply to de minimis, technical disagreements that are not relevant for otherwise improper governmental activity. Nothing in this provision requires the auditor to contract or consult with external experts regarding the scientific validity, invalidity, or justification of a finding or opinion; or

(vi) Which violates the administrative procedure act or analogous provisions of law that prohibit ex parte communication regarding cases or matters pending in which an agency is party between the agency's employee and a presiding officer, hearing officer, or an administrative law judge. The availability of other avenues for addressing ex parte communication by agency employees does not bar an investigation by the auditor.

(b) "Improper governmental action" does not include personnel actions, for which other remedies exist, including but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of the state civil service law, alleged labor agreement violations, reprimands, claims of discriminatory treatment, or any action which may be taken under chapter 41.06 RCW, or other disciplinary action except as provided in RCW 42.40.030.

You and I each reviewed the details of the complaints, as did Mr. Dietzler. Based on that review and our subsequent conversations, it is my understanding that we concluded both independently and as a group that the conduct alleged could not represent a violation of any of the listed items. Therefore, we will not be referring the complaint to the State Auditor's Office for further action.

In addition, because the policy violations alleged in the complaint are violations only of policy, and not of law, they are established under the authority of the Commissioner. As such, there is no basis to consider action against him as the subject of the complaint. In a conversation on February 8, 2022, I did share the concerns raised in the complaint with the Commissioner in broad terms (to minimize the risks to the complainant's request for identify protection) so that he could consider how best to address such issues in the future.

I have confirmed with both Mr. Dietzler and Mr. Welch that Mr. Dietzler conveyed the information about our review and about the fact that we would not be pursuing the issue further to both Mr. Welch and the complainant in a meeting on the afternoon of February 7, 2022.

At this point, the Office of the Insurance Commissioner considers the complaint to be closed.