



ANNUAL REPORT TO THE GOVERNOR AND THE LEGISLATURE

WHISTLEBLOWER RETALIATION COMPLAINTS COMPLAINTS OF RETALIATION FOR THE DISCLOSURE OF INFORMATION BY PUBLIC EMPLOYEES

January 1, 2005, through December 31, 2005

Prepared By The

STATE PERSONNEL BOARD

William Elkins – President
Sean Harrigan – Vice-President
Patricia Clarey – Member
Anne Sheehan – Member
Maeley Tom – Member

Floyd Shimomura – Executive Officer

801 Capitol Mall
Sacramento, CA 95814

June 2006



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

June 30, 2006

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 investigation of reprisals or retaliation for the disclosure of information by public employees, the 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, 2005, through December 31, 2005.

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.

On December 6, 2005, the five-member Board approved modifications to the Whistleblower Complaint Procedures rules. The most notable modification is the requirement that the Executive Officer refer the case for investigation, or schedule the case for an informal hearing before an administrative law judge. The Office of Administrative Law (OAL) approved the regulations on March 6, 2006.

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 and 2003.

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

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).

Complaint Activity

Sixty-one whistleblower retaliation complaints were filed in the calendar year 2005, which is a 32.60 percent increase from 2004 (46 complaints received). Forty-eight of those complaints were accepted.

Of those forty-eight cases, 26 were "denied or "dismissed", 18 are "pending decision" and 4 cases resulted in adopted stipulations. The cases that are "pending decision" include 16 cases that were scheduled for evidentiary hearing and are pending decision before an Administrative Law Judge, 1 case with a pending Notice of Finding decision and 1 case that is off-calendar, awaiting mediation, at the complainant's request.

A detailed complaint activity chart appears on page 3.

**SPB Whistleblower Retaliation Complaints
Activity Report
(January 2005 – December 2005)**

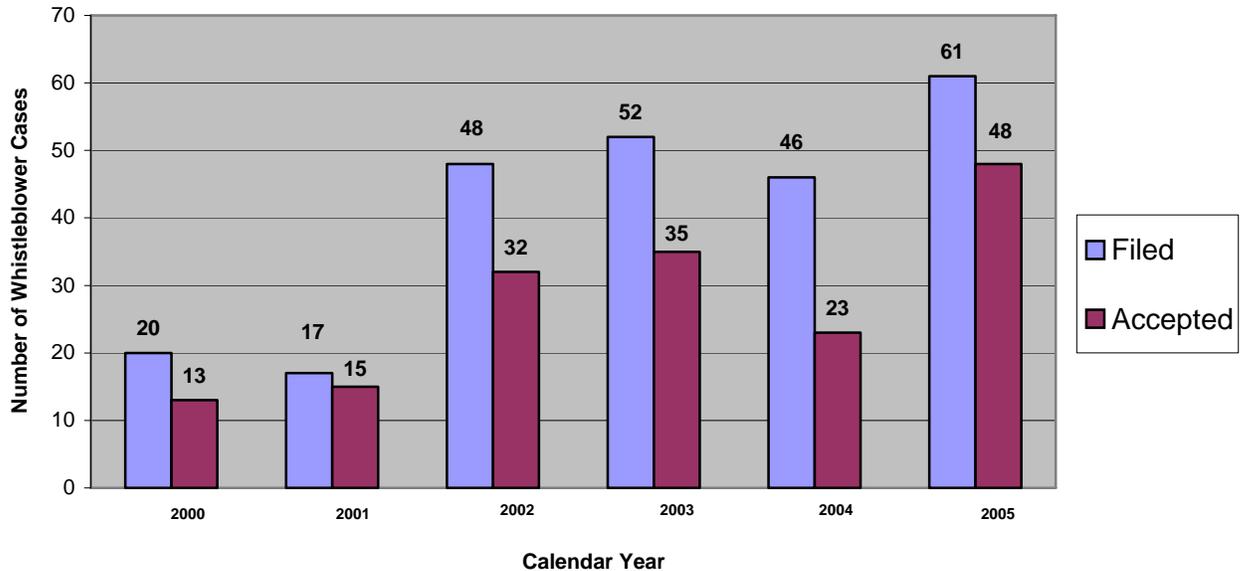
I. Whistleblower Appeals filed

Total Filed	Appeals Not Accepted ²	Appeals Accepted
61	13	48

II. Disposition of Whistleblower Appeals Accepted

Denied/ Dismissed	Pending Decision	Stipulated agreement	Total
26	18	4	48

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 2005**

	Appeal Date	Case #	Status	Department	Consolidated ³	RTFC ⁴
1	01/06/05	05-0013	Appeal not accepted	Forestry and Fire Protection	N	N
2	01/07/05	05-0001	Denied - Notice of Findings	Health Services	N	Y
3	01/10/05	05-0028	Appeal not accepted	Corrections	N	Y
4	01/12/05	05-0047	Stipulation adopted	Agricultural Labor Relations Board	Y - DC, RA, AA: (05-0442, 05-0523, 05-0627)	Y
5	01/18/05	05-0073	Pending decision	Corrections	Y - AA (04-0129)	N
6	01/18/05	05-0099	Pending decision	Corrections	N	N
7	01/28/05	05-0112	Denied - Notice of Findings	Social Services	N	N
8	02/01/05	05-0100	Appeal not accepted	Youth Authority	N	Y

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 RTFC: indicates whether complainant sought adverse action against individually named respondent(s).

**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2005**

	Appeal Date	Case #	Status	Department	Consolidated³	RTFC⁴
9	02/02/05	05-0114	Appeal not accepted	Consumer Affairs	N	Y
10	02/02/05	05-0113	Pending decision	Highway Patrol	Y- AA (05-1714)	N
11	02/08/05	05-0218	Dismissed - Notice of Findings	Consumer Affairs	N	N
12	02/09/05	05-0064	Appeal not accepted	CSU - Cal State University	N	Y
13	02/10/05	05-0097	Stipulation adopted	Mental Health	Y- DC (04-1354)	N
14	02/18/05	05-0298	Denied - Notice of Findings	Water Resources Control Board	N	Y
15	02/18/05	05-0288	Denied - Notice of Findings	State Personnel Board - Personnel	N	Y
16	02/18/05	05-0442	Stipulation adopted	Agricultural Labor Relations Board	Y - DC, RA, AA: 05-0047, 05-0523, 05-0627	Y

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 RTFC: indicates whether complainant sought adverse action against individually named respondent(s).

**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2005**

	Appeal Date	Case #	Status	Department	Consolidated ³	RTFC ⁴
17	02/25/05	05-0425	Denied - Notice of Findings	Health Services	N	Y
18	02/25/05	05-0443	Pending decision	Social Services	Y -WB (04-0432)	Y
19	02/25/05	05-0444	Pending decision	Social Services	Y -WB (04-0433)	Y
20	03/02/05	05-0479	Dismissed - Notice of Findings	Social Services	N	N
21	03/16/05	05-0640	Appeal not accepted	Corrections	N	N
22	03/17/05	05-1163	Pending decision	Corrections	Y - RTFC, DC (05-0404, 05-1172)	Y
23	03/21/05	05-0663	Pending decision	Highway Patrol	Y - DC (05-0682)	N
24	03/25/05	05-0685	Dismissed - Notice of Findings	Health Services	N	Y
25	03/25/05	05-0671	Pending decision	Health Services	Y - DC (05-0677)	N

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 RTFC: indicates whether complainant sought adverse action against individually named respondent(s).

**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2005**

	Appeal Date	Case #	Status	Department	Consolidated ³	RTFC ⁴
26	03/26/05	05-0757	Pending decision	Forestry and Fire Protection	Y - AA 05-1091	N
27	04/04/2005	05-0706	Stipulation adopted	State Library	Y - AA (05-1374)	N
28	04/20/05	05-0896	Dismissed - Notice of Findings	Allen Hancock Community College	N	N
29	04/20/05	05-0831	Dismissed - Notice of Findings	Controllers Office	N	N
30	05/02/05	05-1071	Appeal not accepted	CSU - Cal State University	N	Y
31	05/05/05	05-1066	Dismissed - Notice of Findings	Transportation	N	Y
32	05/12/05	05-1263	Pending decision	Corrections	Y-DC (05-1316)	N
33	05/16/05	05-1262	Dismissed - Notice of Findings	Equalization	N	N

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 RTFC: indicates whether complainant sought adverse action against individually named respondent(s).

**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2005**

	Appeal Date	Case #	Status	Department	Consolidated ³	RTFC ⁴
34	05/20/05	05-1312	Denied - Notice of Findings	Motor Vehicles	N	Y
35	05/25/05	05-1462	Dismissed - Notice of Findings	Corrections	N	Y
36	06/02/05	05-1512	Appeal not accepted	Corrections	N	N
37	06/09/2005	05-1551	Denied - Notice of Findings	22 DAA	N	Y
38	06/21/2005	05-1780	Pending decision	Controllers Office	Y- AA (05-0048)	Y
39	07/05/05	05-2015	Appeal not accepted	Co - San Francisco	N	N
40	07/11/05	05-2112	Appeal not accepted	Corrections	N	N
41	07/15/05	05-2186	Appeal not accepted	Industrial Relations	N	N

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 RTFC: indicates whether complainant sought adverse action against individually named respondent(s).

**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2005**

	Appeal Date	Case #	Status	Department	Consolidated ³	RTFC ⁴
42	07/20/05	05-2225	Dismissed – Notice of Findings	Corrections	N	Y
43	07/27/05	05-2358	Denied – Notice of Findings	Corrections	N	Y
44	08/08/05	05-2534	Dismissed – Notice of Findings	Forestry and Fire Protection	N	N
45	08/16/05	05-2606	Denied – Notice of Findings	CSU – Cal State University	N	N
46	08/26/05	05-2722	Denied – Notice of Findings	Insurance	N	Y
47	08/26/05	05-3334	Pending decision	Transportation	Y – DC, AA (05-3564, 06-0333)	N
48	09/12/05	05-2889	Appeal not accepted	Corrections	N	N
49	09/15/05	05-2974	Dismissed – Notice of Findings	Mental Health	N	N
50	09/23/05	05-3018	Pending decision	Water Resources	Y- AA, DC (04-2843, 05-3235)	Y

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 RTFC: indicates whether complainant sought adverse action against individually named respondent(s).

**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2005**

	Appeal Date	Case #	Status	Department	Consolidated ³	RTFC ⁴
51	10/04/05	05-3084	Dismissed – Notice of Findings	Corrections	N	N
52	10/06/05	05-3234	Dismissed – Notice of Findings	Corrections	N	Y
53	10/22/05	05-3358	Pending – Mediation	Rehabilitation	N	Y
54	11/01/05	05-3497	Dismissed – Notice of Findings	Real Estate	N	Y
55	11/10/05	05-3526	Pending decision	Industrial Relations	Y – DC (06-0485)	Y
56	11/16/05	05-4491	Appeal not accepted	Health Services	N	N
57	11/23/05	05-3750	Dismissed – Notice of Findings	Parks and Recreation	N	N
58	12/12/05	05-4551	Pending – Notice of Findings	Education	N	N

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 RTFC: indicates whether complainant sought adverse action against individually named respondent(s).

**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2005**

	Appeal Date	Case #	Status	Department	Consolidated³	RTFC⁴
59	12/27/05	05-4342	Appeal not accepted	Corrections	N	N
60	12/28/05	05-4340	Pending decision	Corrections	Y - AA (05-2592, 06-0016)	N
61	12/28/05	05-4341	Pending decision	Corrections	Y - AA (05-2596)	N

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 RTFC: indicates whether complainant sought adverse action against individually named respondent(s).