

ANNUAL REPORT TO THE GOVERNOR AND THE LEGISLATURE

WHISTLEBLOWER RETALIATION COMPLAINTS

COMPLAINTS OF RETALIATION FOR THE
DISCLOSURE OF INFORMATION BY PUBLIC
EMPLOYEES

January 1, 2007 through December 31, 2007

Prepared By The

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June 2008



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

June 30, 2008

Introduction

Government Code section 19683, subdivision (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, 2007 through December 31, 2007.

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 whistleblower retaliation complaints.

Amendments to the whistleblower retaliation protections were made in 1987, 2000, 2001, and 2004. In 2002, SPB adopted regulations to implement the whistleblower retaliation laws.

Effective March 8, 2006, the SPB's regulations were revised to include the requirement that the Executive Officer refer cases for investigation or schedule 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.

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 After the moratorium was finally repealed as of January 1, 2000, Whistleblower Retaliation Reports were again produced for calendar years 2000, 2001, 2002, 2003, 2004, 2005 and 2006.

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

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 may, with the approval of the complaining employee, forward its investigative findings to the SPB for the purpose of bringing disciplinary action against an employee who is found to have violated the retaliation provisions when the department fails to do so. As an independent agency, OIG reports to the Governor. OIG also 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 by state civil service or community college employees or applicants who allege being subjected to or threatened with an improper personnel action for disclosing improper governmental activity or refusing to obey an illegal order or directive.

The SPB has 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

In calendar year 2007, fifty one whistleblower retaliation complaints were filed, which is a 15 percent decrease from 2006 (60 complaints received). Of the 51 complaints filed in 2007, 34 of those complaints were accepted.

Of those 34 cases, 4 were "dismissed," 28 are "pending decision," and 2 cases were withdrawn. Of the 28 cases "pending decision", 12 cases were scheduled for evidentiary hearing and are pending decision before an Administrative Law Judge and 16 cases are pending results from an informal hearing. A detailed complaint activity chart appears on page 3.

**SPB Whistleblower Retaliation Complaints
Activity Report
(January 2007 – December 2007)**

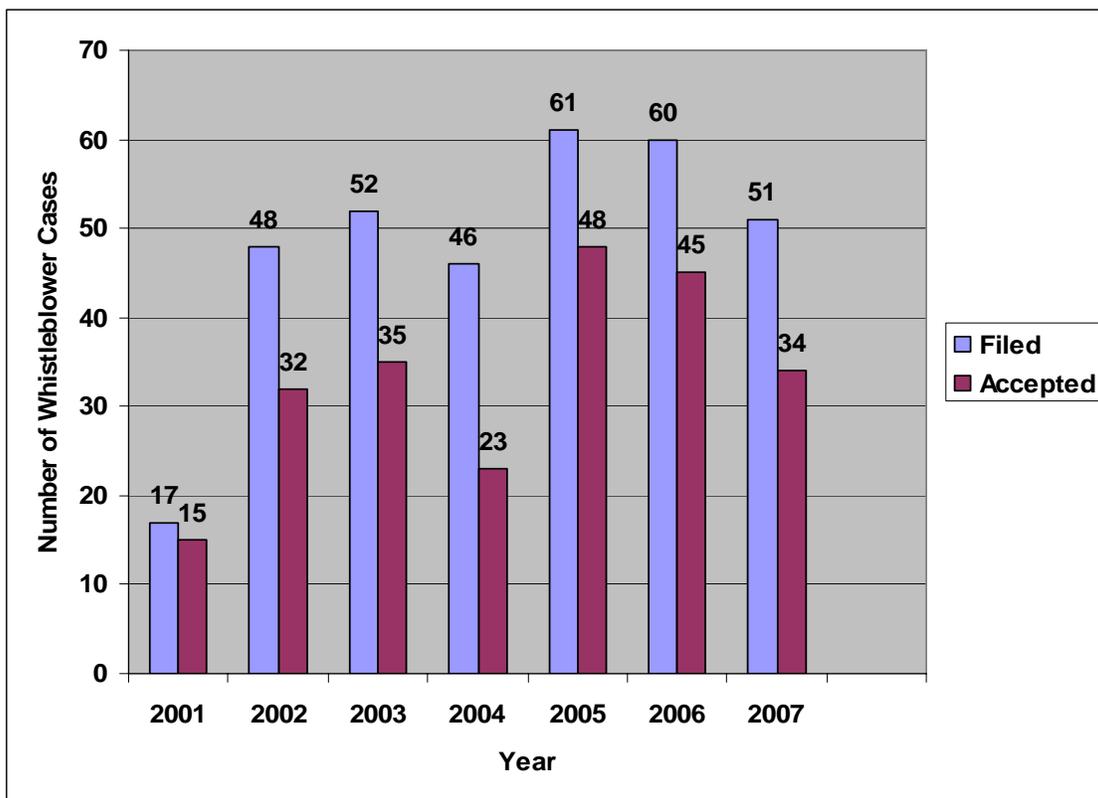
I. Whistleblower Appeals filed

Total Filed	Appeals Not Accepted ²	Appeals Accepted
51	17	34

II. Disposition of Whistleblower Appeals Accepted

Denied / Dismissed	Pending Decision	Stipulated Agreement	Withdrawn	Total
4	28	0	2	34

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 under 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 2007**

	Complaint Date	Case #	Status	Department	Consolidated ³	RDAT ⁴	Formal / Informal Hearing
1	6/22/2007	06-3969	Pending Decision	Energy Resources Conservation & Development Comm.	AA (06-1096)	Y	Formal
2	1/3/2007	06-4353	Pending Decision	Transportation	N/A	Y	Informal
3	5/4/2007	06-4434	Pending Decision	Corrections	N/A	Y	Formal
4	1/10/2007	07-0009	Appeal Not Accepted	Health Services	N/A	Y	Formal
5	1/23/2007	07-0053	Pending Decision	Corrections	N/A	Y	Formal
6	1/24/2007	07-0101	Notice of Finding – Dismiss	Developmental Services	N/A	Y	Informal
7	1/30/2007	07-0102	Notice of Finding – Dismiss	Social Services	N/A	Y	Informal
8	1/31/2007	07-0104	Withdrawn	Education	N/A	Y	Informal

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 disciplinary action be taken.

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Filed with SPB
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	Complaint Date	Case #	Status	Department	Consolidated ³	RDAT ⁴	Formal / Informal Hearing
9	2/2/2007	07-0127	Pending Decision	Social Services	N/A	Y	Informal
10	1/24/2007	07-0230	Appeal Not Accepted	Corrections	N/A	Y	Formal
11	3/5/2007	07-0801	Pending Decision	Corrections	N/A	Y	Informal
12	3/1/2007	07-0841	Appeal Not Accepted	Corrections	N/A	Y	Formal
13	3/11/2007	07-0869	Appeal Not Accepted	Corrections	N/A	Y	Formal
14	3/15/2007	07-0936	Notice of Finding – Dismiss	Transportation	N/A	Y	Informal
15	3/18/2007	07-0947	Appeal Not Accepted	Corrections	N/A	Y	Formal
16	4/2/2007	07-1147	Pending Decision	Conservation Corps	N/A	Y	Informal

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17	4/2/2007	07-1222	Appeal Not Accepted	Mt. San Antonio Community College	N/A	Y	Formal
18	4/13/2007	07-1296	Pending Decision	Transportation	N/A	Y	Informal
19	5/5/2007	07-1566	Pending Decision	Corrections	N/A	Y	Informal
20	5/22/2007	07-1718	Pending Decision	Mental Health	AA (07-1711)	Y	Formal
21	5/18/2007	07-1750	Notice of Finding – Dismiss	Corrections	N/A	Y	Informal
22	6/7/2007	07-1785	Pending Decision	Transportation	N/A	Y	Formal
23	6/6/2007	07-1797	Pending Decision	Transportation	AA (07-1964)	Y	Formal
24	6/11/2007	07-1804	Pending Decision	Marin Community College District	N/A	Y	Informal

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25	6/7/2007	07-1807	Appeal Not Accepted	Tamalpais Union High School District	N/A	Y	Formal
26	6/18/2007	07-1938	Pending Decision	Corrections	N/A	Y	Informal
27	5/23/2007	07-2008	Pending Decision	Corrections	AA (07-2442)	Y	Formal
28	6/29/2007	07-2070	Withdrawn	Managed Health Care	N/A	Y	Informal
29	7/6/2007	07-2209	Pending Decision	Mental Health	AA (07-1369)	Y	Formal
30	7/7/2007	07-2231	Appeal Not Accepted	Corrections	N/A	Y	Formal
31	8/7/2007	07-2427	Appeal Not Accepted	Corrections	N/A	Y	Formal
32	8/3/2007	07-2643	Pending Decision	Corrections	N/A	Y	Informal

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33	8/7/2007	07-2646	Appeal Not Accepted	Corrections	N/A	Y	Formal
34	8/7/2007	07-2682	Appeal Not Accepted	Transportation	N/A	Y	Formal
35	8/20/2007	07-2779	Pending Decision	Board of Equalization	N/A	Y	Informal
36	8/30/2007	07-2942	Pending decision	Corrections	N/A	Y	Informal
37	8/27/2007	07-2957	Pending decision	Consumer Affairs	N/A	Y	Informal
38	9/10/2007	07-3073	Pending Decision	Corrections	N/A	Y	Informal
39	9/14/2007	07-3139	Pending Decision	Consumer Affairs	AA (07-2895)	Y	Formal
40	9/13/2007	07-3146	Appeal Not Accepted	Corrections	N/A	Y	Formal

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41	9/21/2007	07-3269	Appeal Not Accepted	Public Health	N/A	Y	Formal
42	9/21/2007	07-3298	Pending Decision	Corrections	N/A	Y	Informal
43	9/24/2007	07-3300	Pending Decision	Corrections	N/A	Y	Informal
44	11/9/2007	07-4117	Appeal Not Accepted	Corrections	N/A	Y	Formal
45	11/19/2007	07-4228	Appeal Not Accepted	Los Angeles County Dept. of Health Services	N/A	Y	Formal
46	11/19/2007	07-4243	Appeal Not Accepted	Gorman Elementary School District	N/A	Y	Formal
47	11/26/07	07-4323	Pending Decision	Employment Development Dept.	AA (06-4208)	Y	Formal
48	12/5/2007	07-4775	Pending Decision	Corrections	AA (07-3384)	Y	Formal

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49	1/23/2007	07-4783	Appeal Not Accepted	Forestry and Fire Protection	N/A	Y	Informal
50	12/14/2007	07-4828	Pending decision	Kern Community College District	N/A	Y	Informal
51	12/28/2007	07-5018	Pending decision	Corrections	AA (07-4888)	Y	Formal

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