DATE: May 12, 2016
TO: Finance and Government Operations Committee
FROM: Orry P. Korb, County Counsel
SUBJECT: Semi-Annual Report on the 24/7 Whistleblower Program

RECOMMENDED ACTION
Receive semi-annual report from the Office of the County Counsel relating to the status of the 24/7 Whistleblower Program.

FISCAL IMPLICATIONS
There is no impact to the General Fund as a result of this action.

REASONS FOR RECOMMENDATION
Section 3.50.4 of the Board of Supervisors’ Policy Manual provides that the Office of the County Counsel shall be responsible with regard to the 24/7 Whistleblower Program for reporting at least twice per year to the Board the number of complaints received, a synopsis of each complaint, investigative findings and disposition.

An analysis of the contacts received and handled during the reporting period of October 16, 2015 to April 15, 2016 is Attachment A to this report. Attachment A includes the closure of contacts received during this 6-month period.

A separate report of contacts that were received prior to October 16, 2015 and were closed during the last 6 months is Attachment B.

Attachment C is a status report on all contacts received between January 1, 2013 and October 15, 2015.

The below table provides a high-level summary:

<table>
<thead>
<tr>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Contacts Received</td>
<td>37</td>
<td>269</td>
<td>306</td>
</tr>
<tr>
<td>Whistleblower Matters Opened</td>
<td>26</td>
<td>208</td>
<td>234</td>
</tr>
<tr>
<td>Whistleblower Matters Closed</td>
<td>9</td>
<td>137</td>
<td>146</td>
</tr>
<tr>
<td>Whistleblower Matters Pending</td>
<td>17</td>
<td>71</td>
<td>88</td>
</tr>
</tbody>
</table>
A. Contacts Received During This Reporting Period (October 16, 2015 – April 15, 2016)

During the current reporting period from October 16, 2015 to April 15, 2016, County Counsel received 37 contacts through the Whistleblower Program. Twelve were contacts concerning personnel matters, including hiring, employee interactions with co-workers, and assorted other concerns; 14 were non-personnel-related contacts; and 11 contacts were determined not to be County whistleblower matters because the contact concerned entities other than the County, or the contact failed to provide sufficient information to conduct an investigation, or the contact did not concern matters within the scope of the County’s Whistleblower Program.

The 37 contacts received during this reporting period constituted a decrease over the number received during the last six-month reporting period (58). The number of contacts related to personnel matters received in this reporting period (12) was less than the number received during the previous reporting period (31).

Of the 26 contacts received during this reporting period that fell within the purview of the Whistleblower Program, County Counsel referred 19 to County departments, five to the Employee Services Agency (ESA) and two to the Management Audit Division for investigation. County Counsel continued working with ESA and County agencies and departments to close pending whistleblower matters. Of the 26 whistleblower matters opened, 9 were closed.

Attachment A briefly describes the contacts that were received during this reporting period, as well as the status of those contacts.

B. Contacts Received Prior to October 16, 2015 That Were Closed During This Reporting Period

During this reporting period, the County closed 24 additional contacts that had been received during prior reporting periods. Attachment B provides a brief summary of the final disposition of these 24 contacts.

C. Status of Contacts Received by the Whistleblower Program Since 2013

Attachment C provides an update on the status of contacts received between January 1, 2013 and October 15, 2015. Contacts after that date fall into the current reporting period and are included in Attachment A and discussed in section A above.

The Whistleblower Program received 269 contacts from January 1, 2013 to October 15, 2015. Of these, 208 fell within the purview of the Whistleblower Program and were opened as whistleblower matters. The remaining 61 did not fall within the purview of the Program. Of the 208 whistleblower matters, 137 were investigated and closed. Twenty-eight of the 137 were partially or fully sustained, and 109 were not sustained. Where a matter was partially or fully sustained, corrective action was taken to address the issue. The 208 matters encompassed a variety of issues: 165 concerned personnel matters, including hiring, employee interactions with co-workers, and assorted other concerns; 43 were non-personnel matters.
D. Aging of Open Whistleblower Matters

As of the date of preparation of this report, the investigation had not been completed in 71 whistleblower matters from prior reporting periods and 17 matters received in the current reporting period.

<table>
<thead>
<tr>
<th>Duration</th>
<th>Matters</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.0 Years to 3.5 Years</td>
<td>5</td>
<td>(6%)</td>
</tr>
<tr>
<td>2.5 Years to 3.0 Years</td>
<td>13</td>
<td>(15%)</td>
</tr>
<tr>
<td>2.0 Years to 2.5 Years</td>
<td>4</td>
<td>(4%)</td>
</tr>
<tr>
<td>1.5 Years to 2.0 Years</td>
<td>4</td>
<td>(4%)</td>
</tr>
<tr>
<td>1.0 Years to 1.5 Years</td>
<td>19</td>
<td>(22%)</td>
</tr>
<tr>
<td>0.5 Years to 1.0 Years</td>
<td>26</td>
<td>(30%)</td>
</tr>
<tr>
<td>0 to 0.5 Years</td>
<td>17</td>
<td>(19%)</td>
</tr>
<tr>
<td>Total</td>
<td>88</td>
<td>(100%)</td>
</tr>
</tbody>
</table>

E. Contacts Involving Alleged Retaliation for Filing Prior Whistleblower Matters

Based on the Office’s review of previous and current Whistleblower contacts, the Office is not aware of receiving any whistleblower contacts involving alleged retaliation for filing prior whistleblower matters.

**CHILD IMPACT**

The recommended action will have no/neutral impact on children and youth.

**SENIOR IMPACT**

The recommended action will have no/neutral impact on seniors.

**SUSTAINABILITY IMPLICATIONS**

The recommended action will have no/neutral sustainability implications.

**BACKGROUND**

At its April 13, 2010 meeting, the Board adopted Policy Resolution No. 2010-211 adding Section 3.50 to the Board of Supervisors’ Policy Manual directing the establishment of a process for the receipt, acceptance, investigation, documentation and monitoring of reports of improper government activity in accordance with County of Santa Clara Ordinance Code, Division A25, sections A25-750 to A25-753. On April 27, 2010, the Board adopted an amendment to Chapter VII of Division A-25 to establish a central intake system through the Office of the County Counsel to receive, accept, screen, document, analyze, investigate and track whistleblower contacts.

County Counsel implemented the Whistleblower Program, assigning responsibility to an Assistant County Counsel and specified staff members to develop a telephone-based system to receive and process whistleblower contacts along with an online system developed in cooperation with the Information Services Department. An anonymous telephone reporting
service was established allowing callers to speak with specified staff members during business hours and to leave confidential messages at a voicemail address during non-business hours, accessible only by members of the County Counsel team. A web-based reporting system was created, which includes a form to be completed and submitted online by complainants and which is then automatically directed to a specified member of the team. Finally, an internal protocol for handling contacts was enacted, calling for all contacts to be forwarded to the Assistant County Counsel for screening and referral for investigation, for records to be retained confidentially in County Counsel’s document system, for maintenance of a record of matters handled, and for coordination with ESA where many of the matters are investigated.

In response to the Management Audit report recommendations presented to the Finance and Government Operations Committee on January 14, 2016, County Counsel has updated its semi-annual report to include statistical tables to: account for beginning and ending inventories, contacts received, whistleblower matter investigations opened, and matters closed; stratify open matters based on the number of months open; and separately report any contacts involving alleged retaliation for filing prior whistleblower matters.

**CONSEQUENCES OF NEGATIVE ACTION**

The Committee will not receive the semi-annual report of the 24/7 Whistleblower Program.

**ATTACHMENTS:**

- Attachment A to Whistleblower Report - Contacts Received October 16, 2015 to April 15, 2016 (PDF)
- Attachment B to Whistleblower Report - Contacts Received in Prior Periods That Closed Between October 16, 2015 and April 15, 2016 (PDF)
- Attachment C to Whistleblower Report - Status Update for Contacts Received January 1, 2013 to October 15, 2015 (PDF)