DATE: April 12, 2018
TO: Finance and Government Operations Committee
FROM: James R. Williams, County Counsel
SUBJECT: Biannual Report on the 24/7 Whistleblower Program

RECOMMENDED ACTION
Receive biannual report from the Office of the County Counsel relating to the status of the 24/7 Whistleblower Program. (Held from February 8, 2018, Finance and Government Operations Committee meeting, Item No. 8)

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

REASONS FOR RECOMMENDATION
Under Board Policy Section 3.50 related to the 24/7 Whistleblower Program (Program), the Office of the County Counsel (CCO or Office) provides reports twice per year to the Board, through its Finance and Government Operations Committee (FGOC). This is one of two biannual reports issued by CCO. At its November meeting, the FGOC approved a reporting schedule for the biannual reports to occur in February and August. This report covers the eight-month period April 16 through November 30, 2017. The August report will cover the six-month period December 1, 2017 through May 31, 2018.

The format of this report and its attachments generally follow that of previous such documents provided to FGOC. The Program has begun to make progress towards significantly revamping the Program. This report provides updates on the progress. Enhanced tracking statistics and further identification of trends will become available in future reports as the intake vendor is engaged and the expected new database is implemented. This report includes revisions of selected tables and limited trend identification related to complaints that have been received during the eight-month period.

We include a brief status report on the revamping of the Program followed by the biannual report.

Additional Progress Achieved Since Report was Deferred in February
At the direction of FGOC, upon the deferral of this report from February to the April meeting, additional progress related to the primary improvements of the program have been included in this introductory section of the report. The latest complaint closure and opening data for the three-month period of December 1, 2017, through February 28, 2018 are reported here and will be included in the next six-month report to the Committee in August to adhere to the Committee-established six-month data time periods.

- **Hotline Intake Vendor Procurement** – Contract negotiations for an intake vendor have commenced. We have made clear that the selected vendor must be prepared to expedite the implementation process as County staff works with it to establish County-specific scripts, business processes, database fields, and reporting tools.

- **Whistleblower Program Staffing** – The first of two CEO Personnel Investigators began in January and has made significant progress in initiating investigations and becoming familiar with the Whistleblower Program and processes. The CEO’s office continues to work with the Employee Services Agency to recruit the second CEO Personnel Investigator.

- **Complaint Closure and Opening Statistics** – During the three-month period of December 1, 2017 through February 28, 2018, 26 new complaints were received; 42 complaints were closed. Sixteen of the 26 new complaints were received during the month of February, suggesting the overall volume of complaints received may be increasing.

The following table stratifies the closed complaints by disposition category. It is important to note that a new disposition category has been added. This category “Employee Separation from County” has been used in 13 closures when the subject(s) of the complaint is no longer employed by the County, eliminating both the ability to and purpose of investigating the complaint or investigating it any further if some investigatory work has taken place.

<table>
<thead>
<tr>
<th>Disposition Category</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not Sustained</td>
<td>14</td>
</tr>
<tr>
<td>Employee Separation from County. No further action taken; subject(s) of the allegation no longer employed by County.</td>
<td>13</td>
</tr>
<tr>
<td>Resolved Directly by Department</td>
<td>6</td>
</tr>
<tr>
<td>Sustained</td>
<td>5</td>
</tr>
<tr>
<td>Not a Whistleblower Matter</td>
<td>2</td>
</tr>
<tr>
<td>Insufficient Information</td>
<td>1</td>
</tr>
<tr>
<td>Does Not Involve County</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>42</strong></td>
</tr>
</tbody>
</table>

Additional information related to the complaints that have been opened and closed during the three-month period are provided in Attachments A and B respectively.

- **Whistleblower Dashboard (Attachment C)** – Attachment C presents summary data in a performance dashboard format as of March 16, 2018 to provide the Committee with the
most current data possible. As directed by the Committee, the primary focus of the Whistleblower Program staff has been investigations of newer complaints, while also conducting research to resolve and close older complaints. The dashboard graph depicts the increased rate of complaint closures which has taken place thanks to the Board’s investment of resources into the Program. Specifically, the number of open complaints overall has decreased from 223 in November of 2017 to 174 as of March 16, 2018. This net reduction of 49 open complaints has been accomplished by reviewing older complaints and more aggressively addressing and managing newer complaints. Further progress is expected and will be reported in the next biannual report.

**Status Report Regarding the Revamping of the Whistleblower Program**

On October 18, 2016, the Board directed CCO, the Office of the County Executive (CEO), and the Board’s Management Audit Division to return to the Board with proposals to make improvements to the Program. On February 28 and March 14, 2017, the Board approved increased staffing and resources in the Program. In summary, the Board approved:

1. adding two full-time investigators who would report directly to the Chief Operating Officer to conduct investigations of personnel complaints;
2. adding funding to CCO’s budget to hire a program coordinator;
3. contracting with a third-party complaint intake provider;
4. funding for additional attorney hours and outside investigators to support the program; and
5. funding for additional hours for the Management Audit Division to conduct investigations.

The Whistleblower Program Manager has been in the position since September 2017 and has been focused on investigating and closing complaints as well as managing the implementation of the various aspects of the Board-approved plan to strengthen the Program.

In December 2017, the Board approved revisions to the policies applicable to the Program after these revisions were presented and forwarded at the November FGOC meeting. These revisions codify the improved structure of the Program.

Current efforts underway include:

1. CCO has issued an Informal Competitive Procurement (ICP) for an intake vendor. Evaluation of the proposals, contract award, contract negotiations, and implementation are expected to take place over the next several months. The vendor will receive complaints and information on a confidential or anonymous basis, and be required to track complaints to resolution.

2. CCO has worked closely with the Chief Operating Officer to support the recruitment of the two personnel investigators. These positions will be important in the investigation of personnel-related Whistleblower complaints.

3. CCO staff is working to review all open complaints, including those that were received since the Program was created to determine the status and what additional steps are necessary to move the complaints towards closure. This work has resulted in the closure of 66 complaints during the reporting period.
4. CCO and the Program are working with the Office of the County Executive to determine how best to ensure effective collaboration between existing and new county programs, including the Office of Labor Standards Enforcement (OLSE).

5. Another important aspect of the work that has taken place during the reporting period is the flow mapping of receipt, assignment, and closure of complaints among the various participants, including the manner in which conclusions regarding whether or not complaints are sustained will be made. This work is important as the Office of the County Executive and its investigators join the Program, and Whistleblower staff prepares to orient the intake vendor to the County’s Program. As an example, Whistleblower complaints that raise certain discrimination-related allegations are to be referred to the County’s Equal Opportunity Department (EOD) for investigation.

**24/7 Whistleblower Program Biannual Report**

The below table provides a high-level summary of complaints received during the latest reporting period and since 2013.

<table>
<thead>
<tr>
<th></th>
<th>April 16, 2017 – November 30, 2017 (Current Reporting Period)</th>
<th>January 1, 2013 – April 15, 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints Received</td>
<td>66</td>
<td>387</td>
</tr>
<tr>
<td>Complaints Closed</td>
<td>37</td>
<td>180</td>
</tr>
<tr>
<td>Complaints Open</td>
<td>29</td>
<td>94</td>
</tr>
</tbody>
</table>

The most common method to submit complaints during the reporting period (24 complaints) was using the County’s online form (36%), with 8 additional complaints (12%) received through direct emails. Thirteen, or 20% of the complaints, were received through the telephone hotline, while 21 or 32% of the complaints were received through other means.

**A. Complaints Received During this Reporting Period (April 15, 2017 to November 30, 2017)**

During the current reporting period from April 15, 2017 to November 30, 2017, the Program received 66 complaints. Thirty-eight were complaints concerning personnel matters, including hiring, employee interactions with co-workers, and assorted other concerns; 16 were non-personnel complaints including those alleging improper delivery of services, improper use of public resources, etc.; and 12 complaints were determined not to be County whistleblower complaints because the complaint concerned entities other than the County, or the complainant failed to provide sufficient information to conduct an investigation, or the complaint did not concern matters within the scope of the County’s Whistleblower Program.

The chart below categorizes the complaints received by County policy area and Governance Committee. Future reports will include department-specific information related to sustained complaints.
The number of complaints received during this reporting period constituted a 43% increase over the number received during the last six-month reporting period when normalized to account for the eight-month length of the current reporting period. The percentage of complaints related to personnel matters received in this reporting period (58%) was similar to the percentage of such complaints received during the previous reporting period (54%). The percentage of complaints that were either not related to the county or for which there was insufficient information was also similar in this reporting period (18%) to the previous period (14%).

The chart below provides a summary of the types of complaints received during the reporting period.
Attachment D briefly describes the complaints that were received during this reporting period in more detail, as well as the status of those complaints.

B. Complaints Received Prior to April 15, 2017 That Were Closed During This Reporting Period

During this reporting period, the Program closed 29 additional complaints that had been received during prior reporting periods. Attachment E to this transmittal provides a brief summary of the final disposition of these complaints.

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

The link to Attachment F provides an update on the status of complaints received between January 1, 2013 and April 15, 2017. Complaints after that date fall into the current reporting period and are included in Attachment D.

The Program received 387 complaints from January 1, 2013 to April 15, 2017. Twenty-five percent were determined not to be County Whistleblower matters, or sufficient information was not able to be obtained to determine whether an investigation should take place. When possible, the complainants were provided with appropriate referral and resource information. Thirty-seven of the 184 complaints that were investigated and closed were partially or fully sustained. Where a matter was partially or fully sustained, corrective action was taken to address the issue. Ninety-seven, or 25 percent, of the complaints received during this period are in a pending or open status.

D. Closure of Complaints

As noted above, 37 of 66 complaints received during the current reporting period were closed. As described above, an additional 29 complaints were also closed during the reporting period that had been received prior to April 15, 2017.

Of the 37 complaints closed that were received during the current reporting period, 10 were not sustained, 19 were not related to the County or were determined not to be Whistleblower matters, and 7 were closed for insufficient information. Additionally, one of the closed complaints was categorized as having been resolved directly by the Department prior to the whistleblower investigation having taken place. Investigative work is proceeding on the remaining complaints to determine if the complaints/allegations will be sustained or not.

While none of the 37 closures resulted in the complaints being sustained, inquiries and investigations into complaints that are not sustained often result in increased training, supervision and a heightened attention to the issues raised by the complaints.

E. Aging of Open Whistleblower Complaints

Using the January 1, 2013 date as the beginning, and November 30, 2017 as the end date (as directed by FGOC), the investigation has not been completed in 123 whistleblower complaints from prior reporting periods and matters received in the current reporting period. //
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### Age Range

<table>
<thead>
<tr>
<th>Age Range</th>
<th>Complaints</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.5 Years to 5.0 Years</td>
<td>5</td>
<td>4%</td>
</tr>
<tr>
<td>4.0 Years to 4.5 Years</td>
<td>13</td>
<td>11%</td>
</tr>
<tr>
<td>3.5 Years to 4.0 Years</td>
<td>1</td>
<td>1%</td>
</tr>
<tr>
<td>3.0 Years to 3.5 Years</td>
<td>4</td>
<td>3%</td>
</tr>
<tr>
<td>2.5 Years to 3.0 Years</td>
<td>15</td>
<td>12%</td>
</tr>
<tr>
<td>2.0 Years to 2.5 Years</td>
<td>14</td>
<td>11%</td>
</tr>
<tr>
<td>1.5 Years to 2.0 Years</td>
<td>7</td>
<td>6%</td>
</tr>
<tr>
<td>1.0 Years to 1.5 Years</td>
<td>16</td>
<td>13%</td>
</tr>
<tr>
<td>0.5 Years to 1.0 Years</td>
<td>19</td>
<td>15%</td>
</tr>
<tr>
<td>0 to 0.5 Years</td>
<td>29</td>
<td>24%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>123</strong></td>
<td></td>
</tr>
</tbody>
</table>

Attachment F is a status report on all complaints received between January 1, 2013 and November 30, 2017.

An additional 100 complaints remain open that were received between the implementation of the Program and the January 1, 2013 date. At least 69 of these complaints are personnel-related. Based on direction from the Board of Supervisors, any complaints that are open or pending will be transferred to the new database for continued investigation. The Office continues to assess the status of all complaints in preparation for the transition to the new database of the intake vendor. In many instances, research indicates that the issues in aged complaints have either already been resolved by Board or Administration’s actions, or that the employees related to the complaints have since separated from the County. In other instances, an investigation may have been carried out by the department that requires review, discussion and potentially additional investigatory steps. CCO will continue to carefully consider the circumstances around any complaint, regardless of its age, before determining that the complaint should be closed.

F. Complaints Involving Alleged Retaliation for Filing Prior Whistleblower Complaints

During this reporting period two allegations of retaliation based on Whistleblower complaints having been filed were either not sustained or were inconclusive. It should be noted that in all its dealings with line staff, managers, executives and members of the public, Program staff emphatically state that retaliation will not be tolerated, citing the County’s Ordinance Code, Board Policy, and the State of California’s Whistleblower Protection Law. The transition from departmental personnel to the CEO staff conducting the investigations provides a more direct means by which to emphasize the County’s zero tolerance for retaliation.

**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 A25 to establish a central intake system through the Office of the County Counsel to receive, accept, screen, document, analyze, investigate, and track whistleblower complaints.

County Counsel implemented the Program, assigning responsibility to an Assistant County Counsel and specified staff members to develop a telephone-based system to receive and process whistleblower complaints 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 complaints was enacted, calling for all complaints to be forwarded to the Assistant County Counsel/Whistleblower Program Manager for screening and referral for investigation, for records to be retained confidentially in County Counsel’s document system, for maintenance of a record of complaints handled, and for coordination with ESA where many of the complaints were investigated.

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

In May of 2017 the Board of Supervisors approved additional resources for the Program including three positions, support of a contract intake vendor and increased appropriations related to investigatory work by the Management Audit Division and contract investigators. On December 5, 2017 the Board of Supervisors approved amendments and revisions to the Board Policy and Ordinance Code related to the Program and the reporting of improper government activity.

LINKS:
• Replaces: 89940: Receive biannual report from the Office of the County Counsel relating to the status of the 24/7 Whistleblower Program. [February 8, 2018 FGOC, Item 8]

ATTACHMENTS:

• Attachment A to Whistleblower Report - Matters Opened Between December 1, 2017 to February 28, 2018 (PDF)
• Attachment B to Whistleblower Report - Matters Closed Between December 1, 2017 to February 28, 2018 (PDF)
• Attachment C to Whistleblower Report - Dashboard of Whistleblower Complaints as of March 16, 2018 (PDF)
• Attachment D to Whistleblower Report - Contacts Received April 16, 2017 to November 30, 2017 (PDF)
• Attachment E to Whistleblower Report - Contacts Received in Prior Periods That Closed Between April 16, 2017 and November 30, 2017 (PDF)
• Link: Attachment F to Whistleblower Report - Status Update for Contacts Received January 1, 2013 to April 15, 2017 (PDF)