



TED STRICKLAND
GOVERNOR
STATE OF OHIO

TO: **Department / Agency Directors and Chief Legal Counsels**
FROM: Kent Markus
Chief Legal Counsel
DATE: October 11, 2007
SUBJECT: Procedures for Notification of Employee Wrongdoing and/or Suspected Illegal Activity

The purpose of this Memorandum is to set forth the procedures to be followed when illegal activity and/or wrongdoing by any state employee or official is suspected. This policy sets forth the procedures for processing such matters and provides for the careful, expeditious handling of all allegations and claims made against state employees. The procedure does not affect the rights and obligations set forth in any Collective Bargaining Agreement and/or any Statutory Notification Requirements. Any questions concerning the application of the procedures described below to a particular situation should be directed to:

Jose A. Torres
Deputy Legal Counsel
Office of the Governor
77 South High Street, 30th Floor
Columbus, OH 43215
614.644.0095
Jose.Torres@governor.ohio.gov

I. Definitions:

- “Department” as used in this Memorandum shall include all agencies, offices, boards, commissions and similar entities directly responsible to the Governor, and/or whose members are appointed by the Governor.
- “Director” as used in this Memorandum shall include all directors or other heads of any department and their designees.

- “Illegal Activity” as used in this Memorandum includes fraud, theft, assault and other violations of local, state and/or federal law, including violations of state ethics laws, committed or in the process of being committed, by a state employee on any property owned or leased by the state or during the course of executing official duties.
- “Wrongdoing” as used in this Memorandum includes a serious act or omission, committed by a state employee on any property owned or leased by the state or during the course of executing official duties. Wrongdoing is conduct that is not in accordance with standards of proper governmental conduct and which tends to subvert the process of government, including, but not limited, to gross violations of departmental or agency policies and procedures, executive orders, and acts of mismanagement, serious abuses of time, and other serious misconduct. For purposes of this reporting procedure, wrongdoing does not include illegal or suspected illegal activity. Likewise, wrongdoing does not include activity that is most appropriately handled through the department’s human resources personnel.
- “Chief Legal Counsel” as used in this Memorandum includes the Chief Legal Counsel at each of the departments and their designees.
- “Director of Public Safety” as used in this Memorandum includes his/her designee.

II. Emergency Procedure:

1. Whenever it appears that any alleged illegal activity was committed, or is in the process of being committed, and an *immediate* law enforcement response is *necessary* to protect life, physical safety, property and/or preserve evidence, the State Highway Patrol’s Office of Investigative Services should be the first police agency to be notified. No employee will be disciplined if the call is made to 911 instead of the Highway Patrol number. However, a faster response will be received in many cases by calling the State Highway Patrol first.
2. In central Ohio, the State Highway Patrol should be called at (614) 752-0234 during normal business hours. After hours, call (614) 466-2660. In other areas of the state, reports should be directed to the local State Highway Patrol post. Attached is the list of local State Highway Patrol posts addresses and telephone numbers. A trooper will be dispatched to start an investigation. An Illegal Activity written notice, as outlined in section III, shall also be prepared and submitted.
3. If an emergency procedure is not necessary, the procedure outlined in Section III should be used instead.

III. Illegal Activity Procedure:

1. Any state employee that becomes aware of suspected non-emergency illegal activity shall immediately notify the Director or the Chief Legal Counsel of the department for which the reporting employee works.
2. Although the departments and agencies are reminded of their duty to comply with the whistleblower statutes Ohio R.C. § 124.341 and Ohio R.C. §4113.52, employees who report conduct that they believe is illegal or unethical should have a reasonable factual basis for believing that improper activities have occurred, and should provide as much specific information as possible to allow for proper assessment of the nature, extent, and urgency of the incident.
3. When a Director or Chief Legal Counsel of a department is notified or becomes aware of suspected or alleged illegal activity by any employee, the Director or the Chief Legal Counsel of the department shall notify the Chief Legal Counsel to the Governor and the Director of the Ohio Department of Public Safety as soon as possible in writing. To the extent possible, said written notice shall include:
 - a. Activity believed to be illegal
 - b. What action/investigation, if any, has been taken by the department
 - c. Where the activity occurred
 - d. Name of the person to be investigated
 - e. Time frame in which the activity is believed to have occurred
 - f. How and when the agency learned of the activity
 - g. Agency contact person

Attached is an example of the suggested format for this notification

4. Upon the receipt of a written notice of suspected illegal activity, the Director of the Ohio Department of Public Safety and the Chief Legal Counsel to the Governor will confer to determine how to proceed with the investigation. The Director of the Ohio Department of Public Safety and the Chief Legal Counsel to the Governor will involve the Inspector General, the State Highway Patrol, the Ethics Commission, the State Auditor and/or any other law enforcement authority deemed appropriate. The Director of the Ohio Department of Public Safety or the

Chief Legal Counsel to the Governor will notify the reporting department of this action.

5. Because a criminal investigation may be necessary, the department in question should not conduct an internal investigation unless and until specifically directed to do so by the Chief Legal Counsel to the Governor or the Director of the Ohio Department of Public Safety. Administrative inquiries must give way to criminal investigations and no one suspected of illegal activity should be approached, disciplined or placed on administrative leave without clearance from the office of the Chief Legal Counsel to the Governor or the Director of the Ohio Department of Public Safety.

IV. Serious Wrongdoing Procedure:

1. Whenever any state employee becomes aware of wrongdoing by any state employee, that employee shall immediately notify the Director or the Chief Legal Counsel of the department for which the reporting employee works. The notification may be either oral or written.
2. When a Director or Chief Legal Counsel of a department becomes aware of suspected wrongdoing by any employee, the Office of the Inspector General should be contacted directly, as soon as possible. To the extent possible, said written notice shall include:
 - a. Alleged Wrongdoing
 - b. What action/investigation, if any, has been taken by the department
 - c. Where the activity occurred
 - d. Name of the person to be investigated
 - e. Time frame in which the activity is believed to have occurred
 - f. How and when the agency learned of the activity
 - g. Agency contact person

Attached is an example of the suggested format for this notification

3. If appropriate, the Inspector General will then initiate an investigation or will involve The State Highway Patrol, the Ethics Commission, the State Auditor and/or any other law enforcement authority deemed appropriate.

4. A copy of the written notification shall be sent to the Chief Legal Counsel to the Governor and the Director of the Ohio Department of Public Safety.

V. Additional Procedures:

1. Any reporting employee may also contact the Inspector General and file a written complaint or file a complaint using the Inspector General's anonymous hotline at (800) 686-1525 in the case of wrongdoing or non-emergency illegal activity.
2. If the Governor or any member of his immediate staff, a Department Director and/or Chief Legal Counsel, is suspected of illegal activity or wrongdoing, the Inspector General should be contacted directly. The Inspector General will then initiate the appropriate investigation.
3. The normal procedure for notification to the Chief Legal Counsel to the Governor or the Director of the Ohio Department of Public Safety is suspended in the cases covered by Section V.2.

VI. Designations

1. Kent Markus has designated Deputy Legal Counsel, Jose A. Torres, to receive all communications on his behalf with respect to this memorandum.
2. Any Director or Chief Legal Counsel who delegates responsibilities under this Memorandum to a designee, should inform the Director of Public Safety and Jose A. Torres.

VII. Record Keeping:

1. The reporting department shall keep a record of the cases reported by the department. To the extent possible, this record should include an updated status of the investigation. The investigating entity shall notify the Director of Public Safety, the Chief Legal Counsel to the Governor and the reporting department when the illegal activity investigation is completed.
2. All records pertaining to an active investigation are confidential law enforcement investigatory records pursuant to R.C. § 149.43 (A)(1)(h).

CONFIDENTIAL MEMORANDUM

To: Henry Guzman, Director
Ohio Department of Public Safety

Jose A. Torres, Deputy Legal Counsel to the Governor
Office of the Governor

From: (Director or Chief Legal Counsel)

Date:

Subject: Notification of Employee Suspected Illegal
Activity (Department Case Number, if any)

1. Activity believed to be illegal: [be specific]
2. What action/investigation, if any, has been taken by the agency:
3. Where the activity occurred:
4. Name of the person to be investigated:
5. Time frame in which the activity is believed to have occurred:
6. How and when the agency learned of the activity:
7. Agency contact person:

CONFIDENTIAL MEMORANDUM

To: **Thomas P. Charles, C.I.G. -- Inspector General**
Office of the Inspector General

CC: Henry Guzman, Director
Ohio Department of Public Safety

Jose A. Torres, Deputy Legal Counsel to the Governor
Office of the Governor

From: (Director or Chief Legal Counsel)

Date:

Subject: Notification of Employee Suspected Wrongdoing (Department Case Number, if any)

1. Activity believed to be wrongdoing: [be specific]
2. What action/investigation, if any, has been taken by the agency:
3. Where the activity occurred:
4. Name of the person to be investigated:
5. Time frame in which the activity is believed to have occurred:
6. How and when the agency learned of the activity:
7. Agency contact person: