



Investigations of Improper Activities by State Employees:

July 2008 Through December 2008

April 2009 Report I2009-1



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April 28, 2009

Investigative Report I2009-1

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

Pursuant to the California Whistleblower Protection Act, the Bureau of State Audits presents its investigative report summarizing investigations of improper governmental activity completed from July through December 2008.

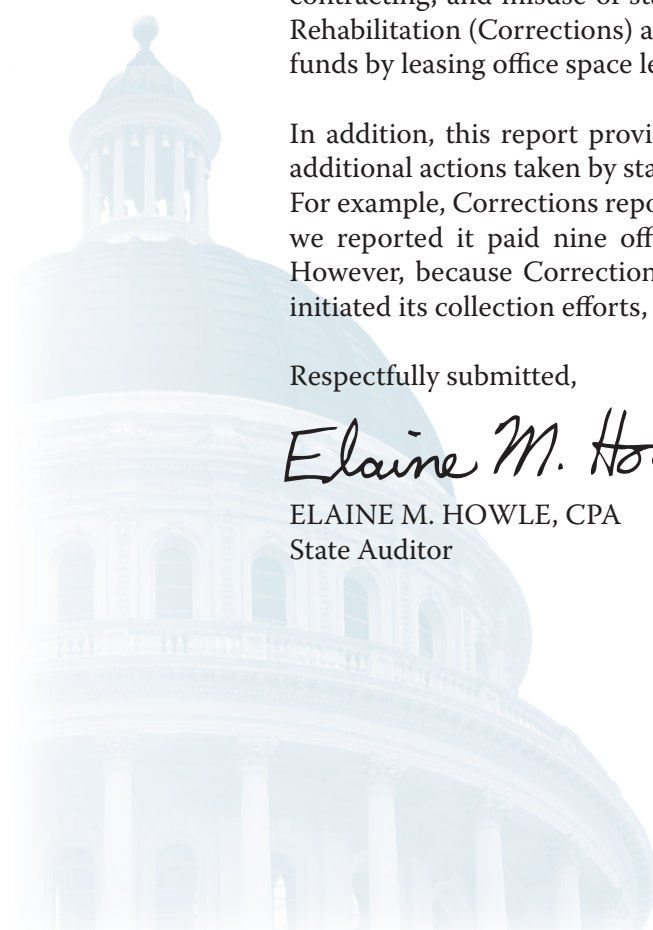
This report details nine substantiated allegations in several state departments. Through our investigative methods, we found waste of state funds, improper payments, improper contracting, and misuse of state resources. For example, the Department of Corrections and Rehabilitation (Corrections) and the Department of General Services wasted \$580,000 in state funds by leasing office space left unoccupied for more than four years.

In addition, this report provides an update on previously reported issues and describes any additional actions taken by state departments to correct the problems we previously identified. For example, Corrections reported that it established accounts receivable totaling \$11,400 after we reported it paid nine office technicians \$16,530 more than they should have received. However, because Corrections used the incorrect period for overpayment recovery when it initiated its collection efforts, it failed to collect \$3,230 to which the State was entitled.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor



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Summary

Results in Brief

The California Whistleblower Protection Act (Whistleblower Act) empowers the Bureau of State Audits (bureau) to investigate and report on improper governmental activities by agencies and employees of the State of California. Under the Whistleblower Act, an *improper governmental activity* is any action by a state agency or employee during the performance of official duties that violates any state or federal law or regulation; that is economically wasteful; or that involves gross misconduct, incompetence, or inefficiency.

This report details the results of nine investigations completed by the bureau or undertaken jointly by the bureau and other state agencies between July 1, 2008, and December 31, 2008. This report also outlines the actions taken by state agencies in response to the investigations into improper governmental activities described here and in previous reports. The following paragraphs briefly summarize these investigations and the state agencies' actions, which the report's individual chapters discuss more fully. For more information about the bureau's investigations program, please refer to the Appendix.

Department of Corrections and Rehabilitation and Department of General Services

The Department of Corrections and Rehabilitation (Corrections) and the Department of General Services (General Services) wasted a total of \$580,000 in state funds by leasing office space that Corrections had left unoccupied for more than four years.

Department of Fish and Game, Office of Spill Prevention and Response

A high-level official formerly with the Department of Fish and Game, Office of Spill Prevention and Response, incurred \$71,747 in improper travel expenses she was not entitled to receive. These included reimbursements for the cost of commuting between her Sacramento headquarters and her Southern California residence and for lodging and meal expenses incurred near her headquarters and residence.

State Compensation Insurance Fund

An employee of the State Compensation Insurance Fund (State Fund) failed to report 427 hours of absences. As a result, State Fund did not charge the employee's leave balances, and she received \$8,314 for hours that she did not work.

Investigative Highlights . . .

State employees and agencies engaged in improper activities, including the following:

- » *Wasted \$580,000 by leasing office space left vacant for more than four years.*
- » *Incurred \$71,747 in improper commute, lodging, and meal expenses.*
- » *Failed to report 427 hours of missed work, for which the employee was paid \$8,314.*
- » *Circumvented state civil service rules by arranging for the selection of a subordinate employee to a vacant position and paying the employee \$6,444 for duties that she did not perform.*
- » *Paid at least \$1,253 more than necessary on a \$4,987 purchase without obtaining competitive price quotes.*
- » *Wasted \$3,000 by paying for private consultant services that another state agency could have provided at no cost.*
- » *Paid an employee \$1,145 for unearned compensation and travel expenses not incurred.*
- » *Sent inappropriate e-mail messages to other state employees. Management then failed to take corrective action despite noting similar behavior in the past.*
- » *Circumvented state law by protecting a vacant position and preventing it from being abolished.*

continued on next page . . .

In response to previously reported investigations, state departments and agencies have either acted or failed to act in the following ways:

- » *The Department of Corrections and Rehabilitation (Corrections) failed to collect \$1.3 million for hours three employees spent working on union activities.*
- » *Corrections initiated recovery efforts for improper payments made to employees for inmate supervision when the employees did not fulfill requirements. However, its recovery efforts did not encompass some of the improper payments.*
- » *The California Environmental Protection Agency continued to take corrective action regarding an employee who failed to promptly submit time sheets that accurately accounted for her time.*

Department of Social Services

A high-ranking official with the Department of Social Services (Social Services) circumvented state civil service laws by arranging for the selection of a specific individual for a vacant position. Social Services also violated civil service laws by appointing the employee to an analyst position even though she performed the duties of a lower-level position. As a result, Social Services paid the employee \$6,444 more than the amount permitted by the State for the lower-level duties.

Department of Parks and Recreation

A Department of Parks and Recreation supervisor did not solicit competitive price quotes for a purchase. Consequently, he failed to pay a fair and reasonable price—and he overpaid by at least \$1,253—for goods costing \$4,987.

Department of General Services

General Services wasted \$3,000 by paying for consultant services from a private vendor even though another state agency could have provided comparable services at no cost.

Department of Justice

A Department of Justice employee failed to properly report her time worked and leave taken, and claimed reimbursement for travel expenses that she did not incur. Further, the employee's manager failed to ensure that her time-reporting and expense claims were accurate. As a result, the employee received \$1,145 for unearned compensation and travel expenses not incurred.

Employment Development Department

An employee of the Employment Development Department (Employment Development) misused his state computer and his e-mail account to send personal messages. The misuse included sending inappropriate messages to other state employees. Further, even though management at Employment Development had noted similar conduct by this employee for several years, it failed to take appropriate action to correct the employee's behavior.

Department of Finance

The Department of Finance circumvented state law when it protected a vacant position by preventing that position from being abolished.

Update on Previously Reported Issues

In September 2005 we reported that Corrections did not track the total number of hours available in a rank-and-file release time bank (time bank) composed of personal leave hours donated by members of the California Correctional Peace Officers Association (union) for union representatives to use when conducting union business. Our investigation identified 10,980 hours that three union representatives used but that Corrections failed to charge against the time bank from May 2003 through April 2005. Instead, evidence indicated the State paid for those hours through its regular payroll at a cost of \$395,256. Moreover, Corrections has not attempted to obtain reimbursements for the hours the three union representatives spent conducting union activities from April 2005 through January 2006. This failure resulted in an additional cost to the State of \$185,546. As a result, the State unnecessarily paid a total of \$580,802 for union leave hours from May 2003 through January 2006.

Records from the State Controller's Office indicated that Corrections began to charge union leave for the hours the three union representatives spent working on union activities beginning in February 2006. However, union leave hours, unlike time-bank hours, must be reimbursed to the State and must include both salary and benefit costs. In January 2009 Corrections reported that it had submitted invoices to the union totaling \$753,460 for the union representatives' work on union activities from February 2006 through December 2008; however, as of the end of December 2008, Corrections had not received payments on any of these invoices. Therefore, Corrections has either failed to account for or to recover any reimbursements for hours that the three representatives used to conduct union activities from May 2003 through December 2008. These unrecovered reimbursements cost the State a total of \$1,334,262.

In October 2008 we reported that Corrections improperly granted nine office technicians increased pay to supervise inmates at its R. J. Donovan Correctional Facility. The office technicians were not entitled to receive the increase because they did not supervise the required number of inmates or because they did not supervise inmates who worked the minimum number of hours required for the employees to receive the increased pay. Consequently, Corrections paid these office

technicians \$16,530 more than they should have received. In March 2009 Corrections reported that it had set up accounts receivable to collect \$11,400 from the employees. However, when it initiated efforts to recover the overpayments from the office technicians, Corrections used the incorrect period for overpayment recovery and thus failed to collect \$3,230 to which the State was entitled.

We also reported in October 2008 that an employee at the California Environmental Protection Agency (Cal/EPA) failed to punctually submit time sheets that recorded her absences accurately. In addition, the officials responsible for managing her daily activities did not ensure that the employee reported her absences accurately and that staff properly charged the absences to the employee's leave balances. At the time of our report, Cal/EPA reported that it had recalculated, updated, and corrected the employee's leave balances to reflect her actual absences and overtime worked. In addition, it planned to establish an account receivable of \$616 covering 24 hours of absences for which the employee's pay should have been docked. In March 2009 Cal/EPA informed us that in December 2008 it began deductions from the employee's pay and that it will continue the deductions until it collects the full amount owed to the State.

Table 1 displays the issues and the financial impact of the cases in this report, the months in which we initially reported on the cases, and the status of any corrective actions taken.

Table 1
The Issues, Financial Impact, and Status of Corrective Actions for Cases Described in This Report

	CHAPTER	AGENCY	DATE OF OUR REPORT	ISSUE	COST TO THE STATE AS OF DECEMBER 31, 2008	STATUS OF CORRECTIVE ACTIONS
NEW CASES	1	Department of Corrections and Rehabilitation and Department of General Services	April 2009	Waste of state funds.	\$580,000	Partial
	2	Department of Fish and Game, Office of Spill Prevention and Response	April 2009	Improper travel expenses.	71,747	Pending
	3	State Compensation Insurance Fund	April 2009	Time and attendance abuse, lax supervision.	8,314	Pending
	4	Department of Social Services	April 2009	Improper hiring.	6,444	Pending
	5	Department of Parks and Recreation	April 2009	Failure to solicit competitive price quotes for its purchase of goods.	1,253	Pending
	6	Department of General Services	April 2009	Waste of state funds.	3,000	Complete
	7	Department of Justice	April 2009	Failure to accurately report time worked, absences, and travel expenses; management's failure to ensure proper time and travel expense reporting.	1,145	Pending
	8	Employment Development Department	April 2009	Misuse of state equipment and resources, incompatible activities, management's failure to take appropriate action.	NA	Complete
	9	Department of Finance	April 2009	Improper saving of a vacant position.	NA	Pending
	10	Department of Corrections and Rehabilitation	September 2005	Failure to account for employees' use of union leave.	1,334,262	Partial
PREVIOUSLY REPORTED ISSUES	10	Multiple state agencies*	March 2006	Inappropriate gifts of state resources and mismanagement.	8,313,600	Partial
	10	Department of Parks and Recreation	March 2007	Misuse of state resources and failure to perform duties adequately.	NA	Partial
	10	California State Polytechnic University, Pomona	September 2007	Viewing of inappropriate Internet sites and misuse of state equipment.	NA	Partial
	10	Department of Consumer Affairs, Contractors State License Board	October 2008	Misuse of state resources, dishonesty.	1,896	Partial
	10	Department of Corrections and Rehabilitation	October 2008	Improper payments for inmate supervision.	16,530	Partial
	10	California Environmental Protection Agency	October 2008	Failure to accurately report absences and inadequate supervision.	23,320	Complete
	10	California Prison Health Care Services	January 2009	Improper contracting decisions and poor internal controls.	26,718,465 [†]	Partial

Source: Bureau of State Audits.

NA = Not applicable because the situation did not involve a dollar amount or because the findings did not allow us to quantify the financial impact.

* This case focused on the Department of Fish and Game but also involved the California Highway Patrol, the California Conservation Corps, the Department of Corrections and Rehabilitation, the Department of Developmental Services, the Department of Food and Agriculture, the Department of Forestry and Fire Protection, the Department of Mental Health, the Department of Parks and Recreation, the Department of Personnel Administration, the Department of Transportation, the Department of Veterans Affairs, and the Santa Monica Mountains Conservancy.

† California Prison Health Care Services spent \$26,718,465 when it improperly acquired goods and services without competitive bidding. Lacking any documentation of any competition, we are unable to calculate the amount the State may have saved.

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Chapter 1

DEPARTMENT OF CORRECTIONS AND REHABILITATION AND DEPARTMENT OF GENERAL SERVICES: WASTE OF STATE FUNDS

Case I2007-0891

Results in Brief

The Department of Corrections and Rehabilitation (Corrections) and the Department of General Services (General Services) have wasted \$580,000 in state funds by continuing to lease 5,900 square feet of office space that Corrections has not occupied for more than four years.

Background

Corrections operates numerous facilities and offices throughout the State. One of its offices, the Office of Correctional Safety (correctional safety) conducts major criminal investigations and pursues the apprehension of prison escapees and parolees wanted for serious and violent felonies. To perform its mission, correctional safety maintains regional units throughout the State. One of its regional units operates in leased office space located in a privately owned building in Southern California. As the entity that serves as the business manager for the State of California, General Services procures and manages the building space that state agencies need to perform their functions.

Like other state agencies, both Corrections and General Services have a duty to perform their responsibilities in a manner that is not economically wasteful. In particular, the California Government Code, Section 8547.2, states that an improper governmental activity occurs when state agencies or employees of state agencies engage in conduct that is either economically wasteful or grossly inefficient. When we received information that Corrections and General Services were wasting state funds by leasing unused office space, we launched an investigation.

Facts and Analysis

Because of delays and inefficient conduct by both Corrections and General Services, the two agencies have wasted \$580,000 in state funds for leased office space that remained unoccupied over a four-year period from December 2004 through December 2008, the end of our reporting period. Figure 1 on the following page illustrates the history of the lease activities and the delays and inefficient conduct that produced this waste of state funds.

Corrections signed a lease originally scheduled to end in June 2007 for 8,000 square feet of office space in a privately owned building in San Diego. The regional units for two of its offices—correctional safety and its institutions' administrative southern office (regional administration unit)—shared this space. In December 2004 Corrections relocated the regional administration unit, which occupied the larger portion of the office space, to its headquarters in Sacramento. Before the relocation, Corrections had submitted a request stating that correctional safety required only 3,800 square feet of space in the San Diego building and asking General Services to extend the lease through December 2010.

Although General Services apparently received Corrections' request near the end of 2004, it did not act on the request until late June 2005, seven months later. General Services could not explain why it took so long to begin processing the request when initiating the process normally occurs soon after an agency submits its space request. To fulfill a requirement in its leasing process, General Services searched for an available, alternative space already owned by the State that could house correctional safety, but this effort was unsuccessful. In July 2005 General Services approved Corrections' request to remain in the privately owned space that it currently occupied.

In August 2005 General Services' personnel conducted a routine on-site visit to survey the leased office space and confirm the portion of space that Corrections would relinquish. During this visit, General Services learned that correctional safety, which occupied only about 2,100 square feet, was actually interested in moving into the larger vacant space. Given correctional safety's program requirements, the vacant space needed to be altered significantly to include, among other things, a specially constructed armory and evidence rooms with separate security zones, custom storage lockers, and enhanced security areas. Because of correctional safety's drastically changed space needs, General Services realized that Corrections needed a new lease. Using the State's standard lease agreement (outlined in the text box), General Services proceeded to design a new floor plan to satisfy Corrections' revised space needs.

Further, General Services needed to negotiate an amendment to the existing lease for the space that correctional safety currently occupied. General Services had the option to terminate the existing lease by providing at least 90 days' written notice to the building owner (lessor) that it intended to

Provisions of the State's Standard Lease Agreement

The Department of General Services (General Services) established the State's standard lease agreement for state agencies that lease privately owned space. The agreement includes the following:

- Time length of the lease.
- Monthly rent amount.
- Conditions for use of the property, such as availability of parking spaces, payment of utilities, and handling of repairs and maintenance.
- A detailed drawing of the leased space's floor plan.
- A list of requirements applicable to the building owner regarding compliance with state requirements for building code provisions and the accessibility standards of the Americans with Disabilities Act.

Source: General Services' Web site.

Even after the lessor applied a service credit in May 2006, Corrections still continued to pay more than \$13,800 a month on unused leased space.

terminate its lease and attempt to acquire space necessary for correctional safety's needs. Instead, General Services decided to amend the existing lease to extend the lease term and negotiate a reduced rent. In addition, General Services obtained a credit, based on the terms of the existing lease, that Corrections was entitled to receive because it had not used utilities and services in the vacant space since January 2005. General Services began these efforts to adjust the lease in September 2005. At the same time, it initiated lease negotiations with the lessor on a new lease for the 5,900-square-foot vacant portion of the space that the lessor would modify to meet correctional safety's needs.

The lessor delayed progress throughout 2006; it disputed the terms of the language used in the State's standard lease agreement. For example, the lessor challenged its obligation to repaint the leased space and the State's right to make or have the lessor perform desired changes and alterations. In April 2006 General Services obtained an amendment to the existing lease for a decrease in rent of \$1,172 per month because of unused utilities and services at the vacant space, and the lessor applied to Corrections' May 2006 rent an \$18,607 service credit for the unused utilities and services retroactive to January 2005. However, Corrections still continued to pay more than \$13,800 per month on the unused leased space. In May 2006 General Services substantially completed the floor plan to reconfigure the vacant space.

As Figure 1 shows, the negotiation process dragged on through most of 2007. Unable to reach a formal agreement on a new lease for the 5,900-square-foot space, in June 2007 General Services and the lessor extended the existing lease term until December 2007. The lessor informally agreed to the terms of the new lease in July 2007—22 months after negotiations started—but failed to memorialize the terms in an officially executed lease agreement. However, the lessor completed the required Americans with Disabilities Act (ADA) survey and structural survey requirements, and it determined the costs for construction of the planned alterations. Although the survey identified deficiencies in the building's compliance with the ADA that the lessor was obligated to correct, Corrections determined that certain accessibility deficiencies would not impede its operations. General Services required Corrections to formally accept responsibility for these deficiencies; Corrections agreed to do so in October 2007 but failed to generate a formal response.

In November 2007 we began our investigation and confirmed with General Services that correctional safety was still unable to occupy the vacant space. General Services decided to delay pursuit of Corrections' original request for the privately owned space while it searched again for available state-owned space;

however, it could have worked on both activities at the same time. It successfully located available state-owned space in a building near correctional safety's current location and informed Corrections. In February 2008 Corrections sought a waiver from occupying the space in the state-owned building, citing the space's failure to meet correctional safety's program needs. Instead of requiring Corrections to use the state-owned space, General Services approved the waiver and resumed efforts to modify the privately owned space to fulfill Corrections' needs.

Also in February 2008 Corrections finally submitted to General Services its formal written response accepting responsibility for certain ADA compliance deficiencies. General Services then spent four months confirming with Corrections the floor plan and specifications for the new lease proposal for the 5,900-square-foot vacant space.

In June 2008 General Services sent the lessor the tentative new lease agreement containing terms and conditions informally acceptable to both parties in July 2007. General Services simultaneously sent the lessor a lease amendment to the old lease so that Corrections could cease paying rent on the unoccupied office space. The lessor questioned the same lease language that had been resolved nearly one year earlier, brought up new concerns, obtained updated construction prices because its previous costs were outdated, and requested official notification that Corrections had formally accepted responsibility for certain ADA compliance deficiencies.

In September 2008, with increased lessor participation, General Services negotiated to agree informally to cease rent on the unoccupied space. In October 2008 General Services executed an amendment to the old lease that stopped rent retroactively to June 30, 2008, on the unoccupied space, which the lessor officially agreed to relinquish. However, General Services questioned the lessor's updated construction costs, which required further clarification before the new lease agreement could be executed. In addition, Corrections gave General Services its revised formal response accepting responsibility for certain ADA compliance deficiencies because its previous response was inadequate.

As of the end of our reporting period in December 2008, correctional safety was still unable to occupy the 5,900-square-foot vacant space because General Services had not been able to finalize a new lease agreement. Correctional safety is not able to adequately function in its small office space. Staff members must conduct some of their responsibilities off-site at other law enforcement facilities. In addition, the limited space has created inconveniences in correctional safety's ability to maintain efficient program operations.

Despite successfully locating available state-owned space in a building near correctional safety's current location, General Services approved in February 2008 a waiver from Corrections having to occupy the space.

Because of multiple delays and inefficient conduct, Corrections wasted \$580,000 in state funds from January 2005 through June 2008, and General Services has taken more than four years to complete Corrections' request for office space.

For example, it currently has no space to accommodate its evidence and weapons storage, so it stores these items at a distant correctional safety location or at a local law enforcement agency's facilities. Furthermore, the lessor continued to question the same language in the new lease that the parties had previously resolved, and the lessor delayed starting the new lease until May 2009.

Because of multiple delays and inefficient conduct, Corrections wasted \$580,000 in state funds from January 2005 through June 2008. Moreover, General Services wasted more than four years in trying to complete Corrections' request for office space.

Corrections Failed to Adequately Describe Its Need for Space and to Promptly Fulfill Its Responsibilities in the Leasing Process

Over the four-year period that it was seeking space for correctional safety, Corrections failed to give General Services an accurate description of its space needs and to promptly provide required information and approvals that were necessary to facilitate the lease process. Its failures contributed to General Services' delays in meeting Corrections' space needs and caused Corrections to waste state funds.

Corrections Failed to Accurately Describe Its Space Needs in Its Request for Office Space

Corrections was aware that correctional safety intended to occupy the larger space previously vacated by the regional administration unit. However, its request for a space modification in November 2004 failed to provide General Services with a complete, accurate description of correctional safety's requirements so that General Services could properly plan the time and resources needed to fulfill the request. As this report previously explained, the request indicated only that correctional safety was interested in amending its existing lease to reduce its leased space from 8,000 square feet to 3,800 square feet even though it needed 5,900 square feet of space as well as specially constructed rooms and enhanced security areas. Because Corrections failed initially to communicate clearly to General Services its actual space needs, General Services based its approval and its estimated time for planning and leasing tasks on incorrect program information. Thus, Corrections' failure to accurately describe its space needs when it submitted its space request affected General Services' ability to deliver its services promptly and appropriately.

Corrections Failed to Respond Promptly to General Services' Information Requests

During the leasing process, Corrections delayed providing needed responses to General Services for two components. To proceed in securing a new lease agreement, General Services required Corrections to formally acknowledge its responsibility for certain ADA compliance deficiencies. However, Corrections took at least three months—from November 2007 to February 2008—to provide the acknowledgement, causing further delays in completing the new lease. More importantly, a timely response could have resulted in an executed new lease agreement that would have allowed reconfiguration of the vacant space. Thus, correctional safety may have been able to move into the new space by early 2008.

When General Services proceeded to fulfill Corrections' space request with state-owned space in November 2007 because the new lease for privately owned space had not been executed, Corrections failed to respond in a timely manner a second time. Corrections took until mid-February 2008, nearly three months, to inform General Services about its decision to waive the state-owned space. During this time, General Services postponed pursuing an agreement for the privately owned space that would meet Corrections' space needs. Thus, Corrections' stalled response contributed further to the delays in meeting correctional safety's space and operational needs and caused the waste of more state funds.

General Services Failed to Properly Exercise Its Project Management Responsibilities

General Services was slow to act on Corrections' request for a reduction of its leased space, and it allowed the negotiation of a new lease to drag on for an unreasonable amount of time while the State continued to pay for unused space. Furthermore, its leasing actions failed to ensure that Corrections' request was efficiently processed without wasting state funds and time.

General Services Failed to Process Corrections' Space Request for Several Months

General Services delayed processing the space request that Corrections submitted in November 2004. It initially took no action on the request until late June 2005, seven months later. In addition, it did not confirm correctional safety's space needs until August 2005, nine months after Corrections submitted its request. These failures caused the first delays in the lengthy process of relinquishing the unused leased space.

Corrections took at least three months to acknowledge formally its responsibility for certain ADA deficiencies, and it failed to respond in a timely manner to inform General Services about its decision to waive the state-owned space.

General Services' Lease Negotiations Were Excessively Time Consuming

After General Services learned of Corrections' actual program requirements and leasing needs, it spent about 22 months—from September 2005 to June 2007—in initial negotiations with the lessor. Although during this time General Services acted to modify the existing lease—for example, through an amendment to the existing lease, General Services negotiated a rent reduction because of unused utilities and services at the vacant space—it was unable to finalize a new lease agreement.

Furthermore, General Services' actions did not result in a substantial cost savings for Corrections because Corrections was obligated to continue paying almost full rent on the vacant space through June 2008. When General Services realized correctional safety's actual space needs in August 2005, it could have worked to terminate the old lease by providing 90 days' written notice to the lessor and negotiate an agreement for the space that correctional safety occupied. Instead, General Services decided to amend the existing lease to extend the term and slightly reduce the rent on the entire 8,000-square-foot space without executing a lease amendment limiting Corrections' obligation to the space that correctional safety occupied.

In addition, General Services chose to continue negotiations with the lessor when it repeatedly encountered problems. It allowed the lessor to dispute each issue of the new lease proposal individually and successively. It could have ceased or strengthened negotiations at any time during the 22 months. Furthermore, despite its contentious initial negotiations with the lessor, General Services engaged in a second round of negotiations. For another six months, from June through December 2008, the lessor disputed the same standard language of the new lease and brought up new concerns that prohibited the lease from being finalized. Because General Services did not cease or strengthen its negotiations at any time during the prolonged process, it significantly delayed the process for leasing the vacant office space.

General Services Inefficiently Conducted Its Leasing Responsibilities Throughout Its Prolonged Processing of Corrections' Lease

General Services failed to adequately conduct activities connected with Corrections' lease to ensure that it accomplished the process in a cost-efficient manner. Over the four years that General Services processed the lease, it failed to firmly assert leasing actions that would result in the execution of a new lease within a reasonable period and without wasting state funds. Allowing the lessor to inhibit progress of the new lease by disputing the lease language was inefficient.

General Services significantly delayed the process for leasing the vacant office space because it did not cease or strengthen negotiations at any time during the 22 months it took in initial negotiations with the lessor.

Moreover, General Services lacks adequate controls to ensure that it makes cost-effective decisions throughout the leasing process to prevent Corrections or any other state entity from wasting state funds on unoccupied space. For example, General Services overlooked the accumulated cost of state funds spent on the unused space because it had no mechanism to assess the viability of the lease and the costs associated in securing leased space.

Finally, over the four years General Services spent trying to fulfill Corrections' space needs, correctional safety's operations continued to suffer functional inefficiencies. General Services' prolonged leasing activities contributed to Corrections' waste of state funds, and its actions adversely affected correctional safety's operations while it remained in inadequate office space.

Recommendations

To ensure that Corrections effectively performs its facility planning and management in a manner that is not economically wasteful, it should take the following actions:

- Create a procedure to require its employees to confirm leasing needs before submitting a lease request to General Services to ensure that accurate space and leasing information is communicated.
- Establish a policy that requires employees to promptly review and approve required lease information to ensure that decisions can be made quickly and effectively to facilitate the lease process.
- Obtain training from General Services about its leasing process and about its expectations for Corrections' designated staff in charge of requesting leasing services.

To ensure that General Services minimizes waste and inefficiency in its leasing services, it should do the following:

- Establish reasonable completion timelines for new leases, lease amendments, lease renewals, lease extensions, and lease reconfigurations of existing space or for any combination of these leasing activities.
- Strengthen its oversight role to prevent state agencies from unnecessarily using leased space when state-owned space is available.

- Establish reasonable time frames, such as 30 days, for its employees to initiate processing state agency space requests and to confirm with the agency its space needs and program requirements before approval of the request.
- Create guidelines for General Services' leasing representatives when they encounter uncooperative lessors.
- Develop a procedure to evaluate all costs incurred in the processing of a request, including any rent paid on unoccupied space, to ensure that it makes cost-effective decisions when considering the feasibility of a space request.

Agency Response

Corrections acknowledged its lack of monitoring and tracking of this lease project, and its untimely responses to General Services' information requests. Corrections informed us that in February 2008 it initiated a formal notification process for its divisions and programs when requesting leasing services to ensure program information and lease space requirements are obtained. Corrections reported that it has begun to informally track its lease projects to ensure outstanding leasing issues are resolved in a timely manner. It also plans to develop a formal project tracking system to capture all standard lease information, any space alterations, and lease negotiation status to provide management with up-to-date information concerning any Corrections' property. Finally, Corrections stated that the majority of staff in its leasing and property management section have attended training conducted by General Services regarding the leasing tasks and activities involved when Corrections requests office space.

General Services reported that it executed the new lease in January 2009 to be effective in May 2009; however, correctional safety still remains in the smaller office space. It further reported that it would implement a series of actions to minimize waste and inefficiency in its leasing services. In particular, to improve the efficiency of processing lease requests, General Services stated that it added 15 new staff for space-planning activities. It further stated that it established timelines for completing its lease projects with specific estimates for project phases such as project evaluation, site selection, planning, lease negotiation and execution, construction, and occupancy. General Services also indicated its guidelines consider that routine leasing projects will be completed within six months, while more difficult projects with extensive tenant improvements may take up to 24 months. Although General Services has established a time frame of no more than 24 months to complete its lease projects, we consider the 24-month time period

lengthy and arbitrary. While we understand and appreciate that some leasing projects involve extensive efforts by General Services, we nevertheless believe that 24 months—or two years—is not sufficiently justified when it impacts the ability of state agencies to conduct their work adequately and efficiently.

In consideration of the available leasing options to accomplish Corrections' space request, General Services stated that even if it pursued terminating the old lease and relinquishing the unused space, it was not entirely feasible because Corrections required access to space designated for its information technology and storage area housed in nearly 700 of the 5,900 square-foot vacant space. However, General Services did not disclose this information to us in our earlier attempts to confirm the portion of used and unused space. Moreover, the amount of space that we were able to confirm did not clearly establish this additional area as space that correctional safety used. In fact, the lease amendment obtained in April 2006 indicated that the portion of unoccupied space was not less than 5,900 square feet. Although General Services contended that our calculation of the wasteful amount is overstated by the cost of the nearly 700-square-foot area, we nevertheless consider the use of state funds to pay rent on office space that essentially remained vacant during the four years it took General Services to process Corrections' space request significantly wasteful.

To strengthen its enforcement over using state-owned space, General Services indicated that it established policies and practices requiring its asset management branch chief in real estate services to address conflicts with state agencies regarding the use of available state-owned space. It further commented that the California Government Code, Section 14682, which grants General Services the final determination of the use of existing state-owned space under its jurisdiction, was not in effect at the time Corrections' space request was initiated. However, the statute became effective on January 1, 2006, during the time that General Services was processing Corrections' space request. Thus, General Services could have exercised its enforcement authority when it located available state-owned space for Corrections in November 2007.

In establishing reasonable time frames for its employees to initiate processing space requests, General Services informed us that it established a time frame of 18 days to approve the space request that includes a protocol to expedite confirming the space needs and program requirements of the agency prior to approving the request. In addition, General Services stated that it established guidelines for negotiating with lessors. It further stated that it provides ongoing training on negotiating strategies to its real estate staff

and discusses these strategies at monthly meetings. Any significant issues involving uncooperative lessors are escalated to its real estate leasing and planning executive management.

Finally, although General Services asserted that it already had an established procedure to evaluate all costs when it considers the feasibility of its space projects, it stated that its alternatives did not yield a cost-effective solution for the State, when measured against its 24-month time frame. Regardless of its established timeline, we are concerned that General Services does not consider it wasteful to spend state funds on vacant space over a four-year period.

Chapter 2

DEPARTMENT OF FISH AND GAME, OFFICE OF SPILL PREVENTION AND RESPONSE: IMPROPER TRAVEL EXPENSES

Case I2006-1125

Results in Brief

A high-level official formerly with the Office of Spill Prevention and Response (spill office) of the Department of Fish and Game (Fish and Game), received reimbursements that she was not entitled to receive for commute expenses between her Sacramento headquarters and her Southern California residence. In addition, in violation of state travel regulations, Fish and Game reimbursed the official for lodging and meal expenses incurred near her headquarters and her residence. Thus, from October 2003 through March 2008, the official incurred \$71,747 in improper expenses.

Background

State law enacted in 1990 by the Legislature led to the 1991 creation of the spill office as part of Fish and Game. The spill office's mission is to provide the best achievable protection of California's natural resources by preventing, preparing for, and responding to oil spills and through restoring and enhancing affected resources. As a prevention and response organization, the spill office executes Fish and Game's public trustee and custodial responsibilities for protecting, managing, and restoring the State's fish, wildlife, and plants. Like all other state employees, spill office staff must follow an array of laws and regulations intended to ensure that they properly report travel expenses and the use of state vehicles. These laws and regulations also mandate that the spill office and Fish and Game maintain adequate administrative controls to safeguard the propriety of that reporting.

Specifically, Title 2 of the California Code of Regulations provides the travel rules that apply to all state employees when conducting state business. In particular, Section 599.615.1(a) requires that each state agency determine the necessity for travel by its employees and that such travel represent the best interests of the State. In addition, the section requires that the signature of the approving officer certify that the travel was authorized, that the employees incurred the expenses to conduct state business, and that the expenses incurred are appropriate and within the State's travel rules. Section 599.616.1(a) generally defines *headquarters* as

the place where an official or employee spends the largest portion of his or her regular workdays or working time, or where the official or employee returns upon completion of special assignments. This section also specifies that employees may not claim per diem expenses for costs incurred at any location within 50 miles of an employee's headquarters as determined by the normal commute distance. Further, Section 599.616.1(a) prohibits reimbursement for per diem or other expenses incurred at an employee's residence. In a previous investigation, a Department of Personnel Administration (Personnel Administration) representative informed us that this prohibition, although not expressly stated in the regulation, also extends to any per diem expenses incurred within 50 miles of an employee's residence.

In addition, Section 599.626.1(b) stipulates that reimbursement for travel expenses be made only for the method of transportation that is in the State's best interest. This section also disallows—regardless of the employee's normal mode of transportation—expenses that arise from travel between an employee's home and headquarters. Section 599.638.1(d) requires officials or employees to state the purpose of each trip for which they claim reimbursement. Section 599.638.1(e) further requires officials and employees to include their headquarters and residence addresses on each travel claim submitted for payment. Moreover, Section 599.807(a) requires each state agency to maintain a travel log for each state vehicle under its control. This log should document the daily mileage, date and time of travel, itinerary, and identity of the vehicle's driver.

Finally, to minimize fraud, abuse, and waste of government funds, the California Government Code, Section 13401, mandates that all levels of management at a state agency must be involved in assessing and strengthening the agency's administrative controls.

When we were informed that a high-level official with Fish and Game had incurred improper travel expenses, we initiated an investigation.

Facts and Analysis

Our investigation revealed that from October 2003 through March 2008, a high-level official, Official A, improperly claimed \$71,747 for commute and other expenses incurred near her home and headquarters. In addition, despite lacking the necessary authority, current and former officials for the spill office allowed Official A to informally claim that her residence was her headquarters.

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Official A Routinely Claimed Expenses to Which She Was Not Entitled

For more than four years, Official A improperly claimed expenses associated with commuting between her residence and her headquarters, in violation of state regulations that disallow such expenses. Throughout the period we investigated, Official A resided in Southern California. Documents from Official A's personnel files and records from the State Controller's Office indicate that her official headquarters was in Sacramento. In addition, Official A was assigned office space in Sacramento and a state-issued cell phone with a Sacramento area code, and she regularly worked in the Sacramento spill office. However, Official A also claimed she worked from her residence—a practice that spill office officials apparently allowed—in an effort to legitimize expenses that otherwise she was not entitled to incur at the State's expense. Despite her claims, we found no legitimate business reason that required Official A to work from her home. Table 2 summarizes the improper expenses that Official A claimed from October 2003 through March 2008.

Official A improperly claimed expenses associated with commuting between her residence and headquarters for more than four years.

Table 2
Improper Travel Expenses Official A Claimed From
October 2003 Through March 2008

TYPE OF IMPROPER EXPENSE	AMOUNT
Commute expenses for trips between residence and headquarters	\$45,233
Commute-related parking and other expenses	7,608
Lodging within 50 miles of headquarters	10,286
Meals and incidentals incurred within 50 miles of headquarters	6,970
Lodging within 50 miles of residence	486
Meals and incidentals incurred within 50 miles of residence	236
Other improper expenses	928
Total	\$71,747

Source: Bureau of State Audits' analysis of Official A's travel expense claims, vehicle logs, and flight records.

We determined that Official A improperly claimed \$52,841 for expenses related to traveling between her home and headquarters (commute expenses). These expenses consisted of \$45,233 for flights between Sacramento and Southern California, \$6,922 in parking expenses, and \$686 for other commute-related expenses.¹

¹ Other commute-related expenses include a rental car charge, airport shuttle charges, and costs of mileage for Official A's use of her personal car between her residence and various airports.

State travel regulations allow employees to seek reimbursement for parking expenses when going on travel assignments as part of their state duties; however, the trips we identified were part of Official A's commute. In addition, violating prohibitions in a state regulation, Official A improperly claimed \$17,978 in lodging and meal expenses incurred within 50 miles of her home or headquarters. Furthermore, for 21 months during the period we reviewed, Official A improperly claimed \$928 for Internet services at her residence.

Through the course of our investigation, we discovered that to commute between her home and headquarters, Official A used separate state vehicles in Northern and Southern California when she drove to airports to take commercial airline transportation paid for by the State. Official A incurred a total of \$6,026 in airport parking expenses associated with her commute during the period we reviewed. Because the parking receipts submitted by Official A often lacked detail, and because she did not adequately maintain her state vehicle logs or provide sufficient detail for the purpose of her trips on her travel claims, the State apparently paid on several occasions for Official A's parking of state vehicles at separate airports on the same day. Moreover, we found several instances in which Official A incurred airport parking expenses for weekend days on which she apparently conducted no state business. For example, Official A improperly claimed \$329 for parking expenses related to her commute in December 2006. For eight occasions during this month, Official A claimed parking expenses at separate airports on the same day. She also claimed airport parking expenses for six weekend days on which she appeared to have conducted no state work. Similarly, in June 2007 Official A claimed \$178 in commute-related airport parking expenses. These expenses included parking at separate airports on the same day for four different occasions and parking at an airport on eight weekend days. Because Official A incurred parking expenses at separate airports on the same day and parked at airports on weekends with no apparent business reason to do so, her practice of using separate state vehicles to drive to airports in Northern and Southern California is wasteful and not in the State's best interest.

Other Spill Office Officials Allowed Official A to Receive Reimbursements for Travel Expenses That Violated State Regulations

Official A contended that as a condition of her employment, a former high-level official with the spill office allowed her to work from her home, identify it as her headquarters, and claim expenses when traveling to Sacramento.

Official A contended that as a condition of her employment, a former high-level official with the spill office, Official B, allowed her to work from her home, identify it as her headquarters, and claim expenses when traveling to Sacramento. She therefore asserted that she was allowed to use state vehicles or state-funded flights for commutes between her Southern California home and her Sacramento headquarters. In addition, Official A stated

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that she was allowed to claim lodging and per diem expenses in Sacramento, her official headquarters location. After Official B left state employment in 2003, other spill office officials, including officials C and D, approved Official A's travel claims. Officials C and D also allowed her to continue to commute at the State's expense and to receive reimbursements for expenses incurred near her official headquarters.

When we spoke with officials C and D, they indicated that they were aware that officials A and B had some form of informal agreement that allowed Official A to receive reimbursements for expenses incurred near her Sacramento headquarters. However, it appears that officials A and B never documented this arrangement. Even if the agreement had been formally documented, these actions violated state regulations, which do not allow state employees to receive payments for travel expenses incurred near their headquarters or for their commute between home and headquarters. We were unable to contact Official B to confirm his arrangement with Official A, but we believe that such an informal agreement likely existed. Nevertheless, Official B lacked the authority to make such an arrangement.

Official A also contended that a former Fish and Game official was aware that she worked from her residence in Southern California and that she claimed commute expenses and expenses incurred in Sacramento while in her most recent position. However, when we questioned two current high-ranking officials at Fish and Game, officials E and F, they told us that they believed Official A was headquartered in Sacramento. Furthermore, Official E stated that he could think of no legitimate business reason for Official A to claim her residence as her headquarters. Our analysis of the three positions held by Official A from October 2003 through March 2008, leads us to agree that Official A had no business reason to designate her residence as her headquarters.

Fish and Game Should Have Been Aware That Official A's Travel Expenses Were Improper

Our investigation determined that Fish and Game should have been aware that Official A's travel expenses did not adhere to state regulations and were therefore improper. After Official A's travel claims were reviewed and approved by other high-ranking spill office officials, the spill office routed the travel claims to Fish and Game's accounting department for processing and reimbursement. For the vast majority of the travel expense claims that Official A submitted for reimbursement for the period we reviewed, Official A listed on the claim forms her residential address and wrote "same" for her headquarters address. However, Fish and Game accounting

Fish and Game staff never questioned the official about the actual location of her headquarters even though for the vast majority of the travel expense claims submitted, the official listed her residential address and wrote "same" for her headquarters address.

staff never questioned Official A about the actual location of her headquarters. Nevertheless, we found eight examples among Official A's travel claims on which Fish and Game accounting employees asked Official A either to clarify the purpose of her trips or to provide other information. Although Fish and Game accounting staff did not question Official A specifically about the location of her headquarters, she responded at least twice to them that she had an office in Southern California and one in Sacramento. Because state regulations define headquarters as a single location, accounting staff should have elevated this issue to Fish and Game management to ensure that Official A's travel claims were appropriate.

We spoke with a Fish and Game employee who reviewed a large number of the travel expense claims that Official A submitted. The employee acknowledged that she should have questioned Official A's expenses or brought the expenses to the attention of her supervisor. The employee stated that she failed to do so because at the time her workload was too large. In addition, she stated that in the past, some reviewers of travel expense claims had received admonitions when they questioned or reduced the claim amounts of high-level officials. Regardless, Fish and Game accounting staff should have recognized that Official A's headquarters was in Sacramento, and they should have questioned or denied reimbursement for her travel claims. Had they done so, Fish and Game could have avoided reimbursing Official A for her improper travel expenses.

Recommendations

Fish and Game should seek to recover the amount it reimbursed Official A for her improper travel expenses. If it is unable to recover any or all of the reimbursement, Fish and Game should explain and document its reasons for not seeking recovery.

To improve Fish and Game's review process for travel claims submitted to its accounting office, it should do the following:

- Require all employees to list clearly on all travel expense claims their headquarters address and the business purpose of each trip.
- Ensure that the headquarters address listed on travel expense claims matches the headquarters location assigned to the employee's position.
- For instances in which the listed headquarters location differs from the location assigned to the employee's position, require a Fish and Game official at the deputy director level or above to

provide a written explanation justifying the business need to alter the headquarters location. This justification must also include a cost-benefit analysis comparing the two locations and should be forwarded to Personnel Administration for approval.

Agency Response

Fish and Game responded that it is investigating the activities related to this case and determining the appropriate legal and administrative actions warranted, including taking necessary corrective measures or disciplinary actions. In addition, after we provided it with a draft copy of this report in April 2009, Fish and Game produced a document signed by Official B in 2002 that requested Official A's position to be moved from Sacramento to a regional spill office location in Southern California. Fish and Game personnel approved this request; however, it appears this document was not forwarded to Personnel Administration for approval. Thus, the position change was never properly formalized. Further, as we previously stated, Official B lacked the authority to allow Official A to receive payments for travel expenses incurred near her official headquarters in Sacramento or for her commute between home and headquarters.

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Chapter 3

STATE COMPENSATION INSURANCE FUND: TIME AND ATTENDANCE ABUSE, LAX SUPERVISION Case I2007-0909

Results in Brief

An employee of the State Compensation Insurance Fund (State Fund) failed to report 427 hours of absences. Consequently, State Fund did not charge the employee's leave balances for these absences, and it paid her \$8,314 for hours that she did not work.

Background

State Fund is a state agency that provides workers' compensation insurance to California employers and has offices throughout California. Although State Fund operates as a self-supporting, nonprofit enterprise, its employees are subject to state laws governing appropriate timekeeping and incompatible activities.

Specifically, in accordance with the California Code of Regulations, Title 2, Section 599.665, all state agencies have the responsibility to keep complete and accurate time and attendance records for each employee. In addition, the California Government Code, Section 19990, prohibits every state employee from engaging in any employment, activity, or enterprise that is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee. Further, Section 19990(g) lists as an incompatible activity an employee's failure to devote his or her full time, attention, and efforts to state employment during hours of duty.

To comply with this mandate, State Fund requires each of its employees to complete an attendance report at the end of every month and to submit the report to his or her supervisor. Supervisors must review and approve the monthly attendance reports to verify their accuracy. Once the attendance reports are approved, State Fund uses them to enter the employees' absences into a leave accounting system that charges the employees' leave balances for any absences.

Upon receiving an allegation that an employee at State Fund failed to report her absences, we asked State Fund to assist us with the investigation.

Facts and Analysis

As illustrated in Table 3, the investigation revealed that the employee failed to report at least 427 hours of absences from January through December 2007. As a result, State Fund paid the employee \$8,314 for 427 hours that she did not work and had not charged against her leave balances.

Table 3
Cost of the Employee's Time and Attendance Abuse From January 2007 Through December 2007

TYPE OF ABSENCE	HOURS	COST
Whole-day absence	270	\$5,239
Late arrival	118	2,310
Partial-day absence	39	765
Totals	427	\$8,314

Sources: Bureau of State Audits' and State Fund's analyses.

During the 12-month period we reviewed, the employee submitted only eight monthly attendance reports instead of 12, and none of those reports were accurate. By comparing what the employee stated on the reports with other information about her actual attendance—including building access logs, telephone records, and computer activity records—we determined that the employee was absent for full or partial days on which the employee reported that she was present. These absences occurred in February through June, and in August, September, and December 2007. Moreover, by not submitting attendance reports for January, July, October, and November 2007, she received credit for perfect attendance for two months even though the State Fund records described above show that the employee was absent. For the remaining two months, the same records indicate that the hours charged against the employee's leave balances were not sufficient to cover her absences.

In addition to substantiating the employee's improper time and attendance reporting, the investigation determined that the employee's supervisor had lax or nonexistent oversight over her attendance reporting, which raises concerns about the attendance reporting of other employees in the unit. Furthermore, when the supervisor discovered in March 2008 that the employee had not submitted an attendance report for November 2007, the supervisor attempted to resolve the matter by submitting a report for processing. However, when she did so, the supervisor added to the inaccurate reporting because the document stated that the employee was at work on two days that other records indicate she

was absent. Further, the supervisor failed to capture eight hours of absences resulting from the employee's arriving late or leaving early during the month. By not ensuring that employees accurately report their time and attendance and that supervisors hold those they supervise accountable for accurate reporting, State Fund risks employees' engaging in time and attendance abuses that go undetected.

Recommendations

To address the time and attendance abuse by the employee and potential abuse by other employees, State Fund should do the following:

- Fully account for the employee's time by charging her leave balances for the hours she did not work or by seeking reimbursement from the employee for the wages she did not earn.
- Take appropriate disciplinary action for the employee's time and attendance abuse and the lax oversight by her supervisor.
- Provide training to the employee and her supervisor on proper time reporting and supervisory requirements.
- Examine the accuracy of the time and attendance reporting by other employees who report to the same supervisor.
- Establish a process for increased scrutiny of the time and attendance reporting by all members of the employee's unit to ensure that State Fund resolves the reporting abuses discovered during this investigation.

Agency Response

State Fund reported that it interviewed the employee in February 2009 and that it is in the process of determining the appropriate level of action to take.

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Chapter 4

DEPARTMENT OF SOCIAL SERVICES: IMPROPER HIRING Case I2007-0962

Results in Brief

The Department of Social Services (Social Services) failed to follow the requirements imposed by state civil service laws when a high-ranking official arranged for the selection of a subordinate employee to fill a field analyst position. Social Services further violated state civil service laws by appointing the employee to a field analyst position even though she continued to perform the duties of a lower-level analyst. As a result, Social Services paid the employee \$6,444 more than what is permitted by the State for the duties she performed.

Background

Social Services manages a variety of statewide programs aimed at providing aid, services, and protection to needy children and adults. To ensure that it hires employees in a fair manner and classifies them appropriately, Social Services is required in its hiring and classification of employees to comply with the same laws and regulations as other state agencies.

Specifically, the California Government Code, Section 18500(c), declares that the State's comprehensive personnel system is designed to ensure that civil service appointments are based on merit and fitness determined by a competitive process and that applicants and employees are treated in an equitable manner. To that end, the California Code of Regulations, Title 2, Section 250, declares that all phases of the State's hiring process must provide for the fair and equitable treatment of applicants and employees.

To implement this legal mandate, Social Services has adopted specific policies to govern its recruiting and hiring process. One of these policies is that no part of the selection process should be tailored to ensure that a specific individual is the successful candidate. To ensure that Social Service selects the most qualified candidate, its policy states that the interview panel should make a final recommendation after completing all interviews, reviewing personnel files, and making reference checks. Social Services should make this final selection based on a compilation of the data gathered so that it should be clear to an objective third party that the candidate selected was the most qualified. In addition, Social Services has a policy that

requires its managers to make a good-faith effort whenever they recruit for a position to avoid establishing any artificial barriers for applicants and candidates.

The California Government Code, Section 19051, prohibits the appointment of any person to a class that is not appropriate for the duties to be performed. In addition, Section 19818.8 states that a person must not be assigned to perform the duties of any class other than that to which his or her position is allocated, except under certain specific conditions.

Furthermore, the California Code of Regulations, Title 2, Section 8, states that for civil service appointments to be valid, they must be made and accepted in “good faith.” For an appointment to be made in good faith, the appointing power must comply with specified requirements, including assuring that the position is properly classified; intending to employ the appointee in the class, tenure, and location to which he or she is appointed and under the conditions reflected by the appointment document; and acting in a manner that does not improperly diminish the rights and privileges of other persons affected by the appointment, including other eligible individuals. This same section provides that to accept an appointment in good faith, the employee must intend to serve in the class to which he or she is being appointed under the tenure, location, and other elements of the appointment as reflected by the appointment document. If either the appointing power or the employee lacks good faith, the executive officer of the State Personnel Board (Personnel Board) may cancel the improper appointment.

When we received information that a high-level official at Social Services had promoted an assistant to a higher-level position than her duties merited, we initiated an investigation.

Facts and Analysis

Our investigation revealed that Social Services violated state hiring laws when the high-ranking official did not adhere to Social Services’ competitive selection process when she arranged for her assistant to be selected for a field analyst position. Social Services also violated state hiring laws when the official directed the appointment of the assistant to the field analyst position while assigning the assistant primarily the same duties that she had been performing before the appointment, which were those of a lower-level analyst.

The Official's Actions to Reserve a Field Analyst Position for Her Assistant Were Improper

Both the official and her assistant were headquartered in Sacramento. In 2005 the official decided that she wanted to promote her assistant to a higher-paying position. The official stated that the assistant had acquired needed expertise in performing duties as her assistant, and she therefore did not want to lose the assistant to some competing employment opportunity that might pay more. The official therefore made inquiries at several of Social Services' field offices throughout the State to find an unoccupied promotional position that she could fill with her assistant. The official located an unoccupied field analyst position in the San Jose field office she felt would be suitable. She then contacted the regional manager at that field office and advised the regional manager that she wanted to reserve the position for her assistant in Sacramento but that she would have another field analyst position transferred to the San Jose office soon to make up for the position she was reserving.

Apparently, Social Services had already begun the recruiting process for the unoccupied field analyst position in San Jose when the official contacted the regional manager and reserved the position. The interview panel assigned to select the candidate who would fill the unoccupied position consisted of the San Jose regional manager and a program manager. After the official contacted the regional manager, both panelists understood that the position had already been reserved for the official's assistant.

Subsequently, the official's assistant participated in an interview for the field analyst position. Although we found no indication that the assistant did not perform adequately during the interview, panel members informed us that they did not interview anyone else for that position. They also informed us that they subsequently included the other applicants for the position in the pool of candidates for a different field analyst position to be filled at a later date. The panelists selected the assistant to fill the first position, and then presumably they selected the candidate they considered the best of the other candidates to fill the later position.

By reserving the field analyst position for her assistant, the official violated several of Social Services' policies intended to ensure that applicants and potential applicants for positions with the department are treated in an equitable manner as required by Section 18500 of the California Government Code and by Section 250 of Title 2 of the California Code of Regulations.

Even though Social Services had begun the recruiting process to select a candidate to fill an unoccupied field analyst position, the interview panelists understood that the position had already been reserved for an official's assistant.

Most importantly, the official violated the policy that prohibits any tailoring of the selection process to ensure that a particular candidate is the successful candidate for a position. Additionally, she violated the policy that requires the final selection of any candidate be based on a compilation of the data gathered during the hiring process such that it would be clear to an objective third party that the selected candidate is the most qualified. Finally, by reserving a San Jose position for work that would be performed in Sacramento, the official established an artificial barrier to potential candidates in the Sacramento area applying for the position, as potential Sacramento applicants were led to believe that the job was in San Jose rather than Sacramento.

The Official's Appointment of Her Assistant to a Field Analyst Position, When She Did Not Intend for the Assistant to Perform the Duties of That Position, Was Also Improper

After the assistant was selected for the field analyst position, the official directed her formal appointment to the higher-paying position without changing any of her duties as a lower-level analyst.

After the assistant was selected for the field analyst position, the official directed her formal appointment to this higher-paying position. The documentation for the appointment reflected that the assistant would be serving as a field analyst in San Jose. However, after the appointment, the official did not change the assistant's assigned duties but instead directed her to continue performing the same duties that she had performed previously. Moreover, after the appointment, the assistant continued working in Sacramento even though her assigned position number and Social Services' organizational charts indicated that she was now headquartered in San Jose.

After we inquired about the employee's duties, Social Services reported to us in February 2008 that it had determined the employee was not performing the essential duties of a field analyst as described in the duty statement for the position, such as performing inspections in the field. As a result, Social Services took steps to develop a revised duty statement for the assistant to reflect the duties she was actually performing. Social Services then directed its personnel office to perform a desk audit to verify that the assistant was performing the duties outlined in the revised duty statement and determine the appropriate classification for her based on her actual duties. In May 2008 Social Services reported to us that the assistant was performing duties associated with an office analyst position, a lower-level position. Social Services then offered the assistant the option of either remaining as a field analyst and performing the duties of that position or transferring into an office analyst position and continuing to perform primarily the same duties she had been assigned as the official's assistant.

In June 2008 the employee chose to maintain her current duties and transfer into the office analyst position. The transfer became effective retroactive to May 2008. Regarding the assistant having been assigned a San Jose position number even though she was performing her work in Sacramento, Social Services reported that this resulted from a “poor administrative practice.”

By appointing her assistant to the field analyst position, the official appointed her to a class that was not appropriate for the duties she intended her to perform, in violation of Section 19051 of the California Government Code. Similarly, by continuing to assign the assistant to perform the duties of a lower-level analyst after appointing her to a field analyst position, the official violated Section 19818.8.

Moreover, when the official directed the appointment of her assistant to the field analyst position knowing that the assistant would not be performing the duties of this job classification and would not be working at the location specified in the appointment documents, the official failed to make a good-faith appointment, as required by the California Code of Regulations, Title 2, Section 8. Similarly, when the assistant accepted the appointment to the field analyst position knowing that she would not be performing the duties of this job classification and would not be working at the location specified in the appointment documents, she did not accept the appointment in good faith, as required by the same code. The appointment was therefore improper and voidable by the Personnel Board.

From November 2005 through April 2008, Social Services paid the official’s assistant \$4,404 more than it should have paid her because of this improper appointment to an incorrect classification. In addition, from May through September 2008, after transferring the assistant into an office analyst position, Social Services paid her an additional \$2,040 more than it should have paid her because it improperly granted her a 5 percent salary increase above the salary she had been paid as a field analyst.² In total, Social Services paid the assistant \$6,444 more than it should have paid her.

The official failed to make a good-faith appointment and her assistant did not accept the appointment in good faith either, as required by a state regulation.

² In November 2008 Social Services informed us that it had mistakenly granted the 5 percent salary increase to the assistant. It also informed us that it was working to correct that mistake and other errors made in the assistant’s payment history.

Recommendations

To address the improper acts identified and to prevent similar acts from occurring, Social Services should take the following actions:

- Seek retroactive cancellation of the assistant's appointment to the field analyst position.
- Seek from the assistant repayment of the \$6,444 that it improperly paid to her.
- Take corrective action against the official for her improper actions.
- Provide training to management, including the official and other key staff, regarding the laws, regulations, and policies governing the hiring process. The training should be designed to ensure that management and key staff do the following:
 - Make sure that job vacancies are posted with accurate information, including the job location.
 - Adhere to policies that prevent the preselection of candidates for employment.
 - Adhere to policies that require the selection process to be competitive, fair, and equitable.
- Take steps to ensure that employees are performing the duties described in the duty statements for their respective positions.
- Take steps to ensure that its position numbers and organizational charts accurately reflect where employees are headquartered.

Agency Response

Social Services provided its comments in April 2009. Regarding our recommendations to seek retroactive cancellation of the assistant's appointment and repayment of \$6,444, Social Services stated that it believed the employee accepted the appointment in good faith. Social Services also reported that it consulted with the Personnel Board about this appointment. According to Social Services, the Personnel Board determined that the appointment should not be rescinded and the overpayment should not be collected because the employee accepted the appointment in good faith more than one year prior to discovery.

Although we appreciate Social Services' efforts to seek guidance from the Personnel Board, we still conclude that neither the employee nor Social Services acted in good faith in the appointment. As we stated, the employee never intended to relocate to San Jose or to perform the primary duties associated with the field analyst position. Moreover, when offered the option of performing field analyst duties or office analyst duties, she elected to continue performing her office analyst duties and to be transferred into the lower-level classification, indicating that she never intended to perform the primary duties of a field analyst. Further, even if the employee accepted the appointment in good faith, Social Services did not. In fact, Social Services acknowledged that the appointment was illegal. This fact alone allows the Personnel Board to consider canceling the appointment.

As part of the employee's incorrect classification, however, Social Services stated that it had erred in its salary determination when the employee was appointed as an office analyst in May 2008. Social Services indicated that it would work with the Personnel Board to collect \$1,516 in overpayments made to the employee.

In response to our recommendation to take corrective action against the official for her improper actions, Social Services stated that the official has since retired but still works at its headquarters as a retired annuitant. Social Services indicated that it would inform us by June 2009 of any action it takes against the official concerning her improper acts.

For the remaining recommendations, Social Services stated that it would review and update its hiring and selection policies and procedures, and it would provide them to its supervisors and managers. In addition, Social Services stated that specific elements of the hiring process would be appropriately addressed in its supervisor training classes. Moreover, it noted that special emphasis would be made to inform supervisors and managers that they are responsible to ensure that employees perform the duties described in their duty statements and of the possible consequences of improper duty statements. Finally, Social Services stated that its policies and procedures would emphasize the importance of supervisors and managers ensuring that position numbers and organization charts accurately reflect where employees actually work.

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Chapter 5

DEPARTMENT OF PARKS AND RECREATION: FAILURE TO SOLICIT COMPETITIVE PRICE QUOTES FOR ITS PURCHASE OF GOODS

Case I2008-0606

Results in Brief

A Department of Parks and Recreation (Parks and Recreation) supervisor did not solicit competitive price quotes from suppliers of goods, and it failed to pay a fair and reasonable price for goods that cost a total of \$4,987. Consequently, Parks and Recreation overpaid for the items by at least \$1,253.

Background

Parks and Recreation preserves the State's biological diversity, protects natural and cultural resources, and creates opportunities for outdoor recreation. It operates through 23 districts in the State. Within its state park system, Parks and Recreation manages recreation areas, beaches, wildlife reserves, and historic homes. Like all other state agencies, Parks and Recreation must follow state laws and policies about the purchasing and procurement of goods.

Specifically, the California Government Code, Section 14838.5(c), requires that if the estimated cost of goods is less than \$5,000, a state agency should obtain at least two price quotes from responsible suppliers whenever there is reason to believe a response from a single source is not fair and reasonable. In addition, Volume 2, Chapter 4 of the State Contracting Manual (contracting manual) identifies and describes five techniques to use to determine if a supplier's price is fair and reasonable. The five techniques are price comparison, catalog or market pricing, controlled pricing, historical pricing, and cost-benefit analysis. Each of these techniques requires documentation of other recent price quotes or actual costs.

Upon receiving an allegation that the supervisor failed to pay a reasonable price for goods purchased, we opened an investigation.

Facts and Analysis

Our investigation revealed that a supervisor at Parks and Recreation failed to ensure that he paid a fair and reasonable price for goods costing \$4,987, in violation of state law. The supervisor purchased a storage container in December 2007 to store supplies for

several parks that he oversaw at the time. However, the supervisor did not obtain two price quotes using any of the five techniques described in the contracting manual to ensure that the cost of the storage container was fair and reasonable. When we interviewed the supervisor, he recalled that he contacted other suppliers but apparently did not document the price quotes he obtained. He admitted to us that he had not obtained the “best possible price” for the storage container. As proof that the supervisor did not obtain a fair and reasonable price, just three weeks later another Parks and Recreation employee who worked for him obtained a price quote of \$3,734 for a similar storage container. Thus, if the supervisor had obtained and documented fair and reasonable price quotes, Parks and Recreation could have avoided spending an additional \$1,253 for the storage container.

The supervisor provided various reasons why he did not document other price quotes. According to the supervisor, he did not have sufficient staff and was overwhelmed by his workload. In addition, he stated that he had not received sufficient training at the time of the purchase. Parks and Recreation promoted the supervisor in January 2007. However, he indicated that he did not complete his three weeks of supervisor training until June 2008, six months after the purchase of the container.

Recommendations

To ensure that its employees use a purchasing process that conforms with state law, Parks and Recreation should do the following:

- Require its employees to adequately document their efforts to obtain price quotes to ensure that they obtain a fair and reasonable price for the purchase of goods under \$5,000.
- Provide timely training for new supervisors.

Agency Response

Parks and Recreation reported that it will take appropriate action, although it did not specify the action to be taken.

Chapter 6

DEPARTMENT OF GENERAL SERVICES: WASTE OF STATE FUNDS Case I2006-1118

Results in Brief

The Department of General Services (General Services) paid \$3,000 to a private vendor for consulting services that another state agency offered at no charge.

Background

Among its responsibilities, General Services provides custodial service, window washing, and building maintenance service to state buildings throughout the State. One of its critical objectives is to maintain a building environment that protects the health and welfare of state employees and members of the public. To meet this objective, General Services also provides emergency plans and emergency preparedness training to employees in its buildings.

The California Government Code, Section 13401, mandates that all levels of management at a state agency must be involved in assessing and strengthening the agency's administrative controls to minimize waste of government funds. Section 8547.2 defines "economically wasteful conduct" as an improper governmental activity.

When we received an allegation that General Services wasted state funds for emergency preparedness training, we asked General Services to assist us in investigating this matter. We also conducted inquiries to determine whether emergency preparedness training was available at a lower cost from another state agency.

Facts and Analysis

The investigation revealed that General Services wasted \$3,000 when it contracted with and paid a private vendor to provide emergency preparedness training in a state building in Los Angeles in October 2005 even though the California Highway Patrol (CHP) could have provided the same services at no cost. The services for which General Services contracted included several emergency preparedness training sessions for employees in the building.

In response to our inquiry, the CHP reported that it provided General Services with various safety-training classes from 2005 through 2007. In addition, we were told that the CHP provided similar training sessions before 2005.

When we asked why it contracted with a private vendor, General Services responded that state agencies are not required to use the CHP's emergency preparedness services. It also commented that the building manager, who is a General Services' employee, has sole discretion to use these services and may take into account specific issues in determining the appropriate entity to provide the services. In this instance, General Services stated that only one employee had full knowledge of the decision-making process for this contract, but the employee left General Services in October 2006. Apparently, no one other than this employee reviewed and approved the decision to enter into the contract. Thus, General Services asserted that it was unable to sufficiently determine if the contract with the vendor was appropriate.

Although we agree that General Services was not required to use the CHP's services, we believe that engaging the CHP to provide the services would have been fiscally prudent. Moreover, we are concerned that General Services would place full contracting authority with only one employee without any further review by the employee's supervisor or manager. Consequently, given that General Services was unable to sufficiently answer why it paid for services when comparable services were available at no cost, we must conclude that its decision to enter into a contract with a private vendor constitutes a waste of state funds.

Recommendations

To ensure that contracting decisions by state employees result in a prudent use of public funds, General Services should do the following:

- Ensure that it documents all information related to the decisions made for its contracts.
- Ensure at least one level of review and approval for all contracts, including those under \$5,000.
- Communicate to building managers the availability of emergency preparedness training through the CHP.

Agency Response

General Services reported in January 2009 that the process used with this vendor complied with its existing contracting policies. In addition, General Services stated that it does not believe its contract with the vendor was a waste of state funds. Nevertheless, it stated that it recognizes the need for additional coordination with the CHP. Consequently, General Services issued a directive in July 2008 to address building managers' responsibilities for coordinating the procurement of emergency preparedness and evacuation training and drills with the CHP. Further, the directive requires that these services cannot be procured from an outside vendor unless the CHP submits written notification that it is unable to provide the services.

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Chapter 7

DEPARTMENT OF JUSTICE: FAILURE TO ACCURATELY REPORT TIME WORKED, ABSENCES, AND TRAVEL EXPENSES; MANAGEMENT'S FAILURE TO ENSURE PROPER TIME AND TRAVEL EXPENSE REPORTING

Case I2007-1024

Results in Brief

A Department of Justice (Justice) employee failed to properly report her time worked and leave taken from June through August 2007. In addition, she claimed travel expenses that she did not incur during the same period. Further, the employee's manager did not ensure that the employee accurately reported her time and travel expenses. Consequently, Justice paid the employee \$648 in unearned compensation and reimbursed her for \$497 for expenses not incurred.

Background

Among its responsibilities, Justice provides legal services to state agencies and officials, and ensures that state laws are uniformly and adequately enforced. It operates several regional offices throughout the State. Like all other state agencies, Justice is subject to laws and regulations governing the accurate reporting of time and attendance and of claims for reimbursement of business expenses. In addition, Justice policies reinforce the reporting requirements of its employees.

Specifically, in accordance with the California Code of Regulations (regulations), Title 2, Section 599.665, all agencies are responsible for keeping complete and accurate time and attendance records for each employee. To comply with this mandate, Justice policy requires its employees to submit monthly time sheets to document their attendance, absences, and overtime worked. Employees and their supervisors are required to sign the monthly time sheets to certify their accuracy. After a supervisor approves the time sheets, a Justice attendance coordinator verifies them to ensure that time is posted according to the employee's work schedule and that sufficient leave credits are available for time used. Justice then uses the time sheets to post each employee's absences and earned benefits, such as compensating time off, into the State's leave accounting system that charges employees' leave balances accordingly.

The collective bargaining agreement between the State and the Justice employee's bargaining unit (Unit 1) affirms that employees are eligible for compensation of overtime worked in a manner specified by Section 599.702 of the regulations. It further states that overtime is earned at the rate of one and one-half times the employee's hourly rate for all hours worked in excess of 40 hours in a regular work week. Section 599.702 states that overtime must be approved in advance and confirmed in writing. Justice policy further requires its employees to use a standard state form to authorize overtime, with dates of when overtime will be worked, the total overtime hours authorized, the method of compensation, and the reason for extra hours. Once overtime is completed, an employee records the time worked and certifies it by signing the form and obtaining supervisory approval. Justice then processes the overtime form for use as support for the overtime posted on the employee's time sheet.

On a weekly basis, Justice also requires its legal support staff to enter all time in a separate legal timekeeping system that provides more detailed descriptions of time reported for purposes of tracking specific tasks associated with legal and nonlegal activities, as well as absences.

In instances where an employee incurs transportation expenses by using his or her personal vehicle while traveling on official business, Section 599.626 of the regulations requires that when the trip starts or ends at the employee's home, the distance traveled is computed from either the employee's headquarters or residence, whichever is the lesser distance. By signing the State's travel expense claim to seek reimbursement for use of a personal vehicle, employees certify that expenses claimed were actually incurred. In addition, Section 599.638 of the regulations provides that it is the responsibility of the officer approving the travel claim to ascertain the reasonableness of the employee's travel expenses incurred.

Finally, the California Government Code, Section 13401, mandates that all levels of management at state agencies must be involved in assessing and strengthening administrative controls to minimize fraud, errors, abuse, and waste of government funds. Section 13403 further states that the elements of a satisfactory system of administrative controls include a system of authorization and record-keeping procedures adequate to provide effective accounting control over assets, liabilities, revenues, and expenditures.

When we received the allegation that an employee at one of Justice's regional offices failed to charge her leave balances when she was absent, we began an investigation.

Facts and Analysis

The employee is part of a unit of legal support staff in one of Justice's regional offices. Four managers oversee this unit. Manager 1 directly supervises the employee. The employee's workload includes providing support for other legal professional staff and the remaining three managers. Generally, any of the four managers could approve unit employees' monthly time sheets, even for employees they do not directly supervise.³

Our investigation determined that from June through August 2007, the employee failed to account for all time worked and absences taken, and she claimed reimbursement for travel expenses that she did not incur. Moreover, we substantiated that Manager 1 allowed her to disregard time-reporting requirements prescribed in state regulations and Justice policies. Furthermore, managers at the regional office engaged in administrative practices that failed to effectively ensure the accuracy of her time sheets, in violation of state laws and regulations, and Manager 1 failed to scrutinize the appropriateness of claims made for her travel claim reimbursements.

The Employee Failed to Properly Account for Overtime Worked and Absences Taken

The employee failed to properly account for 77 hours of overtime she worked in June and July 2007. In addition, she failed to properly account for 136 hours of absences she took in July and August 2007 for the overtime she previously worked. With the approval of Manager 1, the employee obtained authorization from Manager 2, another manager for the employee's unit, to work overtime in June and early July 2007 with the majority of her casework conducted at an off-site location. However, the overtime was not documented or authorized using Justice's overtime request form. When the employee completed her overtime, she documented in a memorandum to Manager 2 the number of hours and the dates she worked overtime and indicated that she was going to take informal time off at a later date in lieu of compensation. Had the employee properly accounted for the 77 hours of overtime on her time sheet, she would have earned 116 hours of compensated time off. However, the employee's time sheets for June and July 2007 did not reflect these additional hours worked.

³ After we conducted interviews, the managers in the employee's unit modified their procedures in July 2008 to require that each employee submit time sheets for approval directly to that employee's assigned manager.

An employee's time sheets did not reflect overtime worked. She was later absent from work for 136 hours—or 17 days—again not reflected on her time sheets.

Furthermore, the employee's time sheets for July and August 2007 did not reflect the 136 hours—or 17 days—she was absent from work. The employee acknowledged that she was absent on the 17 days and that she did not charge her leave balances for the absences because she used the informal time off to account for the uncompensated overtime she worked in June and early July 2007. However, the employee's 136 hours of absences exceeded the 116 hours of uncompensated overtime by 20 hours. We estimate that Justice paid the employee \$648 in compensation that she did not earn.

The Employee Claimed Travel Expenses That She Did Not Incur

At the same time the employee worked unrecorded overtime in June and early July 2007, she claimed reimbursement for travel expenses she incurred when she traveled to the off-site location to conduct her work. However, she claimed reimbursement for more expenses than she actually incurred. Specifically, the employee overstated the amount of miles she drove her personal vehicle by improperly claiming that she drove from her headquarters to the off-site location for 19 days. Instead, she drove from her home to the off-site location, a 62-mile shorter round-trip distance, on each of the 19 days. Because the employee claimed the longer distance in violation of state regulations, Justice overpaid her \$497 for travel expenses she did not incur.

Justice's Management Failed to Ensure That the Employee Properly Reported Her Time, Attendance, and Travel Expenses

Justice's management in the regional office did not ensure that the employee properly reported the time she worked and the absences she took, and it similarly failed to ensure that the employee properly reported her travel expenses. In particular, when the employee worked overtime in June and early July 2007, Manager 1 never required her to use Justice's time sheet to report the overtime worked. In fact, Manager 1 admitted that employees in this unit neither use time sheets to report overtime hours worked and compensating time off nor request overtime using Justice's overtime request form as specified in Justice policy. Instead, Manager 1 only requires his employees to tell him informally of overtime requests, such as in person or through e-mail communications. However, Manager 1's failure to require his employees to use time sheets to report overtime worked violates state regulations and, in the case we investigated, failed to ensure that the leave taken by one of his employees was commensurate with the overtime.

More importantly, Manager 1 ineffectively monitored the employee's overtime and informal time off. He stated that he never compared the employee's overtime hours documented in the memorandum sent to Manager 2 to the hours of informal time off reported in the legal timekeeping system to ensure that the employee did not take more time off than she earned in overtime. Instead, Manager 1 stated that the employee was responsible for monitoring and keeping track of her individual overtime worked and informal time off taken.⁴ However, this process violates state laws and Justice policies. When we asked Manager 1 if he used other procedures to track the employee's overtime hours to ensure the employee was not overcompensated in informal time off, he stated he did not.

Finally, Manager 1 was careless in authorizing the employee's June and July 2007 travel claims for reimbursement of mileage expenses. By approving the claims, Manager 1 certified that the employee incurred mileage expenses for a greater distance than she actually drove. Manager 1 admitted that he never verified the number of miles the employee claimed she drove. The employee claimed the greater distance from headquarters, and state regulations provide that the shorter distance between the employee's residence and headquarters should be used when travel commences at the employee's home. Consequently, Manager 1's failure to scrutinize the employee's travel claims for conformity with state regulations contributed to Justice's overpayment of \$497 for mileage expenses she never incurred.

Recommendations

To ensure that the employee's leave balances properly reflect her time worked and absences taken, and that the overpayment for travel claim reimbursements are corrected, Justice should do the following:

- Modify the employee's leave balances to reflect the 116 hours of overtime that she earned in June and July 2007.
- Charge to the employee's leave balances 136 hours for her absences on 17 days in July and August 2007.
- Seek reimbursement from the employee for the travel expenses that she did not incur in June and July 2007.

⁴ Manager 1 estimated that each of the other support staff in the unit worked no more than 25 hours of overtime a year.

To ensure that its regional office employees and managers follow time-reporting and travel expense requirements in accordance with appropriate state laws, regulations, the bargaining unit agreement, and its own policies, Justice should do the following:

- Prohibit regional office staff and managers from engaging in informal timekeeping arrangements, require staff and managers to use time sheets to document all time worked and leave taken to ensure employees' leave balances are accurate, and require the use of Justice's overtime request form to authorize and document employees' overtime.
- Provide training to unit staff and managers regarding proper time-reporting requirements, including the use of overtime, and travel claim requirements.

Agency Response

Justice reported that it will direct the employee to revise her time sheets for June and July 2007 to reflect the time the employee worked. This will result in the employee accruing 116 hours of compensated time off for the 77 hours of overtime she worked. In addition, the employee will revise her time sheets for July and August 2007 to reflect the 136 hours of absences. Further, Justice reported that it will inform the employee of the \$497 overpayment in travel expenses and seek reimbursement.

Justice also reported that it will remind regional office staff to follow policies and procedures regarding leave use and time reporting, including using the appropriate forms to account for overtime hours worked and leave used. Finally, Justice stated that it will provide training to staff and managers regarding policies covering travel expense claims, leave use, and time reporting.

Chapter 8

EMPLOYMENT DEVELOPMENT DEPARTMENT: MISUSE OF STATE EQUIPMENT AND RESOURCES, INCOMPATIBLE ACTIVITIES, MANAGEMENT'S FAILURE TO TAKE APPROPRIATE ACTION

Case I2008-0699

Results in Brief

An employee of the Employment Development Department (Employment Development) misused his state computer and state e-mail account for personal purposes, including sending inappropriate messages to other state employees. In addition, he engaged in incompatible activities by failing to devote his time, attention, and efforts to his job when he was at work. Furthermore, management at Employment Development failed to take appropriate action concerning the employee's inappropriate activities despite their noting similar behavior for several years.

Background

Employment Development has employees at numerous locations throughout the State. It connects job seekers and employers through its employment services; provides information on unemployment insurance, disability insurance, or paid family leave claims; and provides labor market tools to the public. Its employees are subject to state civil service laws regarding the use of state equipment and resources and prohibitions from engaging in incompatible activities during work hours. They are also subject to disciplinary action for violation of these laws.

Specifically, the California Government Code, Section 8314, prohibits state employees from using public resources for personal purposes, except for minimal and incidental use. In addition, Section 19990 prohibits each state employee from engaging in any employment, activity, or enterprise that is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee. In particular, Section 19990(g) lists as an incompatible activity an employee's failing to devote his or her full time, attention, and efforts to state employment during hours of duty. Further, Section 19572 provides that state employees engaging in incompatible activities, misuse of state property, and discourteous treatment of the public or other state employees are subject to discipline.

Upon receiving an allegation that an Employment Development employee misused his state equipment, we asked it to assist us in conducting an investigation.

Facts and Analysis

The investigation revealed that the employee misused his state computer and e-mail account for personal and inappropriate purposes. In addition, the employee engaged in discourteous behavior by using his state e-mail account to send inappropriate messages to other state employees. Further, the employee engaged in incompatible activities by failing to devote his full time and attention to his job during his work hours. Moreover, management failed to take appropriate action concerning the employee's activities even though it had identified this employee as having engaged in similar activities for several years.

The Employee Misused State Resources for Personal Purposes and Engaged in Activities That Were Incompatible With His Job

The employee misused his state computer and e-mail account for activities unrelated to his work at Employment Development. As part of the duties of his job, the employee is to ensure that claims are promptly paid, routed, or reissued. His duties require him to use a state computer and Employment Development data systems. However, in an eight-day sampling of e-mail messages taken between February 15, 2008, and April 16, 2008, the investigation revealed that the employee sent 256 e-mails that were personal, some of which were inappropriate in nature. An analysis of the e-mails on these days indicated that the employee spent periods from nearly one hour to eight hours sending e-mails that were unrelated to his duties. For example, on one day in April 2008 during a roughly seven-hour period, the employee sent 75 e-mails, all of which were personal and thus not related to his work. In addition, during an interview, the employee admitted that he sent multiple e-mail messages to an employee in another department that contained vulgar language. He also admitted that he kept three e-mails with sexually explicit photos on his state computer.

The investigation also found that the employee misused his state computer in other ways. He regularly accessed the Internet beyond minimal and incidental use. For example, on three days in April 2008, he spent from one to two hours each day browsing the Internet even though his duties do not require such access. In addition, he used his state computer to send and receive e-mails about his external employment during his work hours at Employment Development. Further, on two occasions the

In an eight-day sampling of e-mail messages over a two-month period, our investigation revealed that an employee sent 256 e-mails that were personal and some of which were inappropriate in nature.

employee got into an Employment Development database without authorization to assist external business associates with claims. Finally, besides using his state computer for these personal purposes, the employee engaged in discourteous behavior when he used his computer and e-mail account to send several inappropriate messages to Employment Development and other state employees. As a result of all of these actions, the employee engaged in incompatible activities when he failed to devote his full time and attention to his state employment during his work hours.

Management Failed to Take Appropriate Action Despite Their Noting Years of Similar Behavior

The employee's inappropriate uses of his state computer and e-mail account were just the latest installment in a series of his improprieties. Since 2001 the employee has repeatedly misused his state time, telephone, and computers to engage in personal business during his workdays. In addition, he inappropriately used his state computer for personal e-mails and to access the Internet. Moreover, the employee had unexcused absences and attendance problems.

Despite the employee's long history of disciplinary problems, Employment Development did not adequately resolve these problems. From January 2001 through November 2007, Employment Development issued 10 written notifications to the employee—and held several formal discussions with him—about his unacceptable behavior. The notifications consistently cited the employee's excessive use of his state telephone, computer, and e-mail account for personal purposes. In addition, on one occasion Employment Development ordered the employee to “cease and desist” contact with another state employee through his state telephone and computer. In at least eight of the 10 written documents the employee received since January 2001, Employment Development specifically stated that the incidents discussed in the respective notifications could form the basis of an adverse action.

Even with these written notices and formal discussions spanning several years, Employment Development did not escalate either its corrective or disciplinary actions against the employee. The State Personnel Board has repeatedly ruled that agencies have the right to proceed with progressive disciplinary actions against employees where it is well documented and when lesser sanctions—such as written reprimands and memos—fail to positively influence the employee. Repeated incidents by the employee over a period of several years demonstrate a measured level of sustained inappropriate behavior. Furthermore, the employee's ongoing misuses demonstrate that his behavior did not change as a

Since 2001 the employee has repeatedly misused state resources to engage in personal business during his workdays.

result of Employment Development's written notifications and discussions. Thus, Employment Development should have sought a more appropriate level of discipline for the employee's inappropriate actions.

After the completion of the investigation, Employment Development informed us in December 2008 that it suspended the employee for 30 days.

Recommendations

To ensure that the employee devotes his full time, attention, and efforts to his work, Employment Development should continue to monitor his use of state telephones, computers, and e-mail account when he returns to work after the 30-day suspension.

To make certain that it responds with consistent corrective action to repeated misuses of state resources, Employment Development should conduct training at regular intervals for its management and branch staff on methods of progressive discipline.

Agency Response

Employment Development responded that it will continue to monitor the employee's use of state equipment to ensure he only conducts state business while on duty. Employment Development added that all of its new managers and supervisors are required to attend a two-week course that covers managerial and supervisory roles and responsibilities, including the proper administration of the progressive discipline process. Further, refresher training is also provided on the progressive discipline process for managers and supervisors when labor contract changes are made resulting from a new collective bargaining agreement.

Chapter 9

DEPARTMENT OF FINANCE: IMPROPER SAVING OF A VACANT POSITION

Case I2008-0633

Results in Brief

The Department of Finance (Finance) circumvented state law and improperly prevented a vacant position from being abolished.

Background

Finance serves as the governor's chief fiscal policy advisor and promotes resource allocation through the State's annual financial plan. Like other agencies throughout the State, Finance is subject to state law governing the abolishment of vacant positions. The California Government Code, Section 12439, requires that any state employee position that remains vacant for six consecutive monthly pay periods must be abolished on the following July 1. This section also mandates that agencies must not perform any personnel transactions to circumvent this law. Section 12439 also identifies various circumstances under which agencies can retain vacant positions or reestablish positions previously abolished with approval from the Finance director.

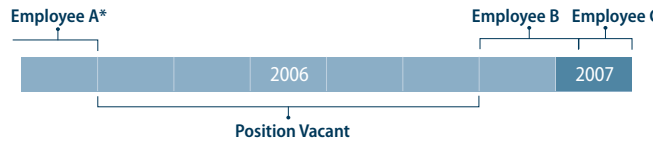
In March 2002 the Bureau of State Audits issued its report, *Vacant Positions: Departments Have Circumvented the Abolishment of Vacant Positions, and the State Needs to Continue Its Efforts to Control Vacancies*, Report 2001-110. At that time, we reported that some departments misused personnel transactions to circumvent the abolishment of vacant positions.

Upon receiving an allegation that Finance circumvented state law to keep a vacant position from being abolished, we asked that it explain the circumstances surrounding the filling of the position and conducted an investigation.

Facts and Analysis

Our investigation revealed a sequence of events indicating that Finance improperly kept a vacant position from elimination; thus, it circumvented a state law intended to abolish long-vacant positions. During the seven-month period from June 2006 through January 2007, three Finance employees occupied one position at various times, as Figure 2 on the following page shows.

Figure 2
Three Employees Occupied One Position From June 2006 Through January 2007



Sources: State Controller's Office employment records and Department of Finance.

* Employee A had filled the position since September 2002.

This position was not filled by anyone for a full five-month period from July through November 2006. Had the position remained unfilled through December 31, 2006, it would have been deemed vacant according to Section 12439 and therefore would have been abolished. However, based on our review of employment records from the State Controller's Office (Controller), Finance manually keyed Employee B's transfer into this position on December 21, 2006, and made it effective December 1, 2006. Finance then transferred Employee B to another unit on January 17, 2007. Employee B informed us that he requested the transfer to another unit in January 2007, but he was not aware he had been transferred to the vacant position in December 2006. Finance appointed another employee, Employee C, to the vacant position on January 18, 2007. When Finance manually keyed in Employee B's transfer into this position effective December 1, 2006, for a period of 49 days, it prevented the position from being abolished by the Controller. As a result, Finance circumvented state law governing the abolishment of vacant positions.

Finance asserted that it did not intend to circumvent state law. It stated that it had selected Employee D to fill the vacant position in December 2006 but delayed Employee D's appointment until January 1, 2007, so that Employee D could receive a wage increase. Thus, we concluded that because Employee D could not fill the position until after it had been vacant for six consecutive months, Finance shifted Employee B into the position to save it from abolishment. However, Finance stated that it was not aware of Employee B's intent to transfer to another unit when it transferred him into the position in December 2006. Nevertheless, because Finance improperly protected the position from being abolished, it circumvented the state law designed to thwart such actions.

Recommendation

To ensure the laws governing vacant positions are followed, Finance should transfer employees from one position to another only when there is a justified business need.

Agency Response

Finance reported that it will issue a letter of instruction within 30 days to the appropriate staff. In addition, Finance will issue memos to its executive management and its chief of human resources to stress the importance of following Section 12439 and to require that any circumvention of this law be reported to upper management.

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Chapter 10

UPDATE OF PREVIOUSLY REPORTED ISSUES

Chapter Summary

The California Whistleblower Protection Act requires an employing agency or appropriate appointing authority for the State of California (State) to report to the Bureau of State Audits (bureau) any corrective action, including disciplinary action, that it takes in response to an investigative report no later than 30 days after the bureau issues the report. If it has not completed its corrective action within 30 days, the agency or authority must report to the bureau monthly until it completes that action. This chapter summarizes corrective actions taken on eight cases described in previous investigative reports.

Department of Corrections and Rehabilitation Cases I2004-0649, I2004-0681, and I2004-0789

We reported the results of this investigation on September 21, 2005.

The Department of Corrections and Rehabilitation (Corrections) did not track the total number of hours available in a rank-and-file release time bank (time bank) composed of personal leave hours donated by members of the California Correctional Peace Officers Association (union) for union representatives to cover union business. As a result, Corrections released employees to work on union-related activities without knowing whether the time bank had sufficient balances to cover the releases. In addition, the management reports from the system that Corrections used to track time-bank charges and donations did not capture a significant number of leave hours used by union members. Corrections charged nearly 56,000 hours against the time bank for hours union members spent conducting union-related activities between May 2003 and April 2005. However, we identified 10,980 additional hours that three union representatives used but that Corrections failed to charge against the time bank. Thus, it appears that these hours were paid through regular payroll at a cost to the State of \$395,256.

Although Corrections asserted that it had reconciled its time bank balances, records from the State Controller's Office (Controller) did not show that Corrections had charged the 10,980 hours to the time bank through the State's leave-accounting system. Similarly, Corrections has not attempted to obtain any reimbursements for

Corrections had issued invoices totaling \$546,979 for the representatives' union leave; however, the union had not made any payments for these invoices.

hours the three representatives spent conducting union activities from May 2005 through January 2006, resulting in an additional cost to the State of \$185,546.

Corrections also provided documents indicating that it had conducted reviews of union leave used by employees from February 2006 through June 2008. The reviews included the three representatives. However, union leave hours, unlike time-bank hours, must be reimbursed to the State by the union and must include both salary and benefit costs.

As a result, Corrections issued invoices to the union requesting reimbursements totaling \$546,979 for the three representatives' union leave. However, as of July 2008, Corrections had not received any payments to reimburse the State for the costs of the three representatives performing union-related activities.

Updated Information

Corrections reported in April 2009 that due to inadequacies in its retention of records, it is unable to reconstruct an accurate leave history for the three union representatives prior to July 2005. Thus, it plans to direct its efforts for the time period subsequent to that date. Accordingly, Corrections noted that it is currently reconciling the cost of union work hours charged by the employees but not billed to union leave for July 2005 through September 2007. However, this appears to contradict information Corrections previously reported to us, which indicated it had completed its review for union leave used by its employees from February 2006 through June 2008. Nonetheless, Corrections added that it intends to issue invoices to the union upon completion of its reconciliation. Thus, while Corrections indicates it is pursuing an accurate accounting of the three employees' union leave hours since July 2005, it has not invoiced the union for any of the hours the three representatives spent working on union activities from May 2003 through January 2006, which represents a cost to the State of \$580,802. In contrast, Controller's records indicate that from July through December 2008, Corrections has largely accounted for two of the three employees' union leave hours and that as of January 2008, the third employee is no longer on full-time union paid leave. Instead, he returned to his full-time assignment at a correctional institution.

Finally, Corrections reported that it has issued additional invoices to the union totaling \$206,481 for union work performed by the two representatives from July through December 2008. However, as of December 2008, Corrections had not received any payments so that it could reimburse the State for the costs of the three representatives performing union-related activities. As a result,

as of the end of our reporting period, Corrections has failed to collect \$1,334,262 for union activities conducted by the three representatives from May 2003 through December 2008. Table 4 summarizes the reimbursements Corrections has failed to collect.

Table 4

Union Leave Costs Not Billed or Reimbursed From May 2003 Through December 2008

TIME PERIOD	COST
Cost of union work hours for which the Department of Corrections and Rehabilitation (Corrections) has failed to seek reimbursement from May 2003 through January 2006	\$580,802
Cost of union work hours billed but not reimbursed to the State from February 2006 through June 2008	546,979
Cost of union work hours billed but not reimbursed to the State from July through December 2008	206,481
Total	\$1,334,262

Sources: Bureau of State Audits' analysis, State Controller's Office records, and invoices provided by Corrections.

Note: The figure for the cost of union work hours for which Corrections failed to seek reimbursement represents the three union members' salaries. The figure for the cost of union work hours billed but not reimbursed includes the union members' salaries plus benefit costs as proscribed in the collective bargaining agreement with the union.

**Department of Fish and Game
 Case I2004-1057**

We reported the results of this investigation on March 22, 2006.

Between January 1984 and December 2005, the Department of Fish and Game (Fish and Game) allowed several state employees and volunteers to reside in state-owned homes without charging them rent. Consequently, Fish and Game violated the state law prohibiting state officials from providing gifts of public funds. Additionally, Fish and Game deprived tax authorities of as much as \$1.3 million in revenue for tax years 2002 through 2005 because it did not report to the Controller the taxable fringe benefits that its employees received when they lived in state-owned housing at rates below fair-market value.

Although Fish and Game was the focus of this investigation, we also discovered that all state agencies that own employee housing may be underreporting or failing to report to the Controller housing fringe benefits totaling as much as \$7.7 million annually. Moreover, because these agencies charged employees rents at rates far below market value, the State may have failed to capture as much as \$8.3 million in potential rental revenue in 2003.

Fish and Game informed us that in an October 2007 meeting with representatives from the union and Personnel Administration, it agreed to put on hold any rental rate increases until all appraisals of its state-owned units are complete and will then negotiate rate increases.

In previous updates for this investigation, the Department of Food and Agriculture, the Department of Veterans Affairs, and the Santa Monica Mountains Conservancy completed their corrective action.

When we updated this issue on October 2, 2008, state agencies reported the following:

The Department of Personnel Administration (Personnel Administration) stated that it had updated and distributed to agencies with state-owned housing its annual State-Owned Housing Survey spreadsheet. In addition, Personnel Administration developed an instructional guidebook to assist agencies in capturing information—such as tenant names, rents, and utility rates—for the survey.

Fish and Game reported that appraisals had been completed for housing at one of its wildlife areas. Fish and Game also stated that it anticipated receiving appraisals on its remaining properties by October 2008. Further, Fish and Game informed us that in an October 2007 meeting with representatives from the union and from Personnel Administration, it agreed to put on hold any rental rate increases until all appraisals are complete. The parties will then resume negotiations on increasing rental rates for state-owned housing.

The Department of Parks and Recreation (Parks and Recreation) notified us that it planned to increase rents in January 2009. It also reported that it had improved its record-keeping and reporting procedures for state-owned housing.

Corrections reported that in following an executive order, it had temporarily suspended the appraisal contract for its state-owned housing program. The executive order prohibited agencies from contracting for services—unless those services were deemed critical—until a fiscal year 2008–09 budget was adopted and until the Department of Finance director confirmed that an adequate cash balance exists to meet the State’s fiscal obligations.

The Department of Developmental Services (Developmental Services) informed us that it had received updated appraisals for all of its state-owned housing and had raised rental rates at all but one of its facilities, which was in the final months of operation before closure. We therefore consider Developmental Services’ corrective action complete.

The Department of Forestry and Fire Protection (Forestry) stated that due to increased vacancies in its state-owned housing, its rental revenue had decreased. Forestry also reported that it had recently

obtained new appraisals for 35 of its 40 occupied state-owned homes and that it was in the process of issuing rent increase notices to reflect the newly appraised values. It planned to obtain appraisals for the five remaining homes in late 2008 or in 2009.

The Department of Mental Health (Mental Health) notified us that it had updated its guidelines for state-owned housing, which include requirements for performing fair-market-value appraisals and timely reporting of housing fringe benefits. In addition, Mental Health stated that it thoroughly reviews housing appraisals every year. We therefore consider Mental Health's corrective action complete.

The California Department of Transportation (Caltrans) told us that it had no additional information to report.

The California Highway Patrol (CHP) reported that its employees reside in state-owned housing as a condition of employment; thus it complies with Internal Revenue Service regulations. As a result, the CHP stated that the difference between the fair-market rent and the amount that it charges its employees is not considered a taxable fringe benefit. In addition, the CHP stated that it received appraisals for housing at two of its locations and that it annually reviews rents at its state-owned housing. We therefore consider the CHP's corrective action complete.

The California Conservation Corps (Conservation Corps) informed us that it contracts to receive appraisals for its state-owned housing and that it reports all taxable fringe benefits to the Controller monthly. We therefore consider the Conservation Corps' corrective action complete.

Updated Information

Personnel Administration reported in February 2009 that it was reviewing survey reports submitted by agencies as of November 2008.

Fish and Game informed us in March 2009 that it had received appraisals for all of its state-owned units by January 2009 and that it has notified employees living in the units about the related taxable fringe benefit that Fish and Game must report to the Controller's Office. Fish and Game told us previously that it would negotiate increased rental rates once it had obtained appraisals for all of its state-owned units, but it did not indicate whether it has done so in its March 2009 update.

In a March 2009 update, Fish and Game did not indicate whether it had negotiated increased rental rates after obtaining appraisals for all of its state-owned units.

Parks and Recreation reported in March 2009 that it had established a residence category justification form in accordance with Internal Revenue Service regulations for taxable fringe benefits. It stated that it had also developed and distributed an additional chapter for its operations manual to provide clear, consistent policy for the administration of its state-owned housing. Further, Parks and Recreation reported that it had intended to raise rental rates by 25 percent effective in January 2009. It stated, however, that through a tentative agreement with Personnel Administration and nine collective bargaining units, current rental rates would remain in effect from February 2009 through June 2010, the duration of the State's furlough program. We consider Parks and Recreation's corrective action complete.

Corrections stated in February 2009 that it had initiated rent increases for its state-owned housing at Folsom State Prison to be effective in April 2009. In addition, Corrections indicated that it was processing rental-adjustment notices for its state-owned housing at San Quentin State Prison. Corrections reported in April 2009 that it had received appraisal reports for its housing at the California Training Facility, Deuel Vocational Institution, and Preston Youth Correctional Facility, and is in the process of completing monthly rent increase notices for those state-owned homes. Finally, Corrections indicated that it has contracted for appraisal reviews at additional institutions, which should be completed by May 2009.

Forestry reported in February 2009 that it had not obtained appraisals for the five remaining homes as it had intended. Forestry noted the homes have been vacated for septic repairs, and due to fiscal constraints they will remain vacant. We consider Forestry's corrective action complete.

Caltrans reported in January 2009 that it has raised rents to fair-market values for all of its properties except where collective bargaining agreements have alternative requirements. We consider Caltrans' corrective action complete.

Department of Parks and Recreation Case I2005-1035

We reported the results of this investigation on March 22, 2007.

An employee with Parks and Recreation repeatedly misused state resources and failed to adequately perform his duties. Over a 13-month period, the employee made more than 3,300 personal telephone calls on his state-issued cellular telephone. In addition, the employee made hundreds of telephone calls to phone numbers

that appeared to be assigned to other state employees' cellular telephones. However, Parks and Recreation determined that the State had never issued these phone numbers to state employees, raising questions about the appropriateness of the employee's calls and about the assignment of the wireless phones.

At the time of our report, Parks and Recreation stated that it had conducted and documented a corrective interview with the employee, and it had submitted a draft departmental notice updating its policy about the use of personal communications devices by its staff. In August 2008 Parks and Recreation informed us that its draft policy contained some information that it could more appropriately present in a Parks and Recreation handbook for its employees. It stated that it planned to incorporate the procedures and instructions about personal communication devices in the handbook, which it intended to publish by February 2009. It intended to finalize its policy for personal communications devices after its handbook was published.

Updated Information

In February 2009 Parks and Recreation informed us that it had drafted its handbook for personal communications devices and had updated its policy; however, after more than two years Parks and Recreation has finalized neither the handbook nor the policy.

California State Polytechnic University, Pomona Case I2007-0671

We reported the results of this investigation on September 20, 2007.

An official at California State Polytechnic University, Pomona (Pomona), repeatedly used university computers to view Web sites containing pornographic material. Pomona found that the official viewed approximately 1,400 pornographic images on two university computers during several weeks in 2006 and from February to May 2007.

When we issued our report, Pomona indicated that the official no longer worked on campus. Pomona stated that it had negotiated a resignation that permitted the official to exhaust all earned leave credits and other paid leave before resigning. We later confirmed the official's separation from Pomona. Pomona also indicated at the time that it had drafted an Appropriate Use Policy for Information Technology. However, Pomona did not indicate whether it had implemented any new controls or software filters to prevent any future access to pornographic Web sites by its employees.

Parks and Recreation determined that the State had never issued certain phone numbers to state employees, raising questions about the appropriateness of an employee's numerous calls and about the assignment of the wireless phones.

In January 2008 Pomona stated that its academic senate approved an Interim Appropriate Use Policy (interim policy), which states that administrators, faculty, and staff must not use computers for personal purposes. The policy further states that inappropriate use of computers includes using computing facilities for purposes other than those for which they were intended or authorized. Pomona reported that to become official, the interim policy must go through a meet-and-confer process with the unions for staff and faculty. Pomona reported subsequently that it met with the two employee unions in July 2008 to start the meet-and-confer process. Pomona stated that the unions requested changes to the interim policy and that all parties must agree to the changes before the policy becomes official.

Updated Information

Pomona reported in March 2009 that it believes the interim policy will be finalized in April 2009. We are concerned about the length of time Pomona has taken to institute the policy.

Department of Consumer Affairs, Contractors State License Board Case I2007-1046

We reported the results of this investigation on October 2, 2008.

An employee with the Contractors State License Board (board) used a state vehicle for personal reasons and falsified records to hide her actual activities when she was supposed to be performing field inspections for the board. The State incurred an estimated \$1,896 loss due to her personal use of a state vehicle from April to August 2007.⁵

At the time of our report, the board informed us that it gave the employee a counseling memorandum and a copy of the current departmental policy pertaining to incompatible work activities. The board also informed us that it intended to seek reimbursement from the employee for the unauthorized miles that she drove her state vehicle when she was on medical leave.

Updated Information

In October 2008, the board informed the employee that she owed the State \$1,896. It also advised the employee that she was obligated to pay the amount owed in full or arrange for an accounts receivable

After the board informed the employee that she owed the State \$1,896, the employee filed an appeal of the board's attempt to collect the funds.

⁵ Board records used in this investigation were not available for June 2007.

with the Department of Consumer Affairs (Consumer Affairs). The employee appealed the board's attempt to collect \$1,896, particularly as it relates to the allegation regarding her inappropriate use of a state vehicle while on medical leave.

In February 2009 the employee submitted a letter to Consumer Affairs disputing the board's position that the employee received an overpayment. In March 2009 Consumer Affairs met with the employee and concluded that \$92 of the \$1,896 owed to the State for misuse of her state vehicle was in fact appropriate. Therefore, Consumer Affairs determined that the employee must reimburse the State \$1,804 for her personal use of a state vehicle from April to August 2007.

Department of Corrections and Rehabilitation Case I2006-0826

We reported the results of this investigation on October 2, 2008.

Between January 1, 2005, and February 29, 2008, Corrections improperly paid nine office technicians a total of \$16,530 for supervising inmates when the technicians did not qualify to receive the money. Corrections also failed to maintain adequate accounting and administrative controls that would prevent such improper payments.

Updated Information

Shortly after we issued our report, Corrections informed us that it had notified the office technicians who received the improper payments in September 2008 that it intended to recover the overpayments. Subsequently, Corrections notified us that it could recover only \$5,130 of the \$16,530 we identified. When we questioned Corrections, it responded that it could only recoup overpayments made within two years of the date on which it initiated recovery. We reminded Corrections that state law allows an agency to recover overpayments going back three years from the date on which it initiates recovery. In March 2009 Corrections reported that it had set up accounts receivable totaling \$11,400 for the employees. However, because Corrections used the incorrect period for overpayment recovery when it initiated its efforts in September 2008, it failed to collect \$3,230 to which the State was entitled for improper payments made from September through December 2005. Table 5 on the following page shows the improper payments we identified and Corrections' recovery efforts.

Corrections failed to collect \$3,230 to which the State was entitled for improper payments made from September through December 2005.

Table 5
 Department of Corrections and Rehabilitation's Improper Payments and Collection Efforts

EMPLOYEE	TOTAL IMPROPER PAYMENTS FOR INMATE SUPERVISION	IMPROPER PAYMENTS CORRECTIONS SHOULD HAVE RECOVERED	IMPROPER PAYMENTS CORRECTIONS IS ATTEMPTING TO RECOVER	IMPROPER PAYMENTS CORRECTIONS FAILED TO PURSUE
Employee A	\$2,090	\$2,090	\$1,900	\$190
Employee B	2,280	2,280	1,900	380
Employee C	1,330	1,330	760	570
Employee D	2,280	1,710	1,520	190
Employee E	1,520	1,520	1,330	190
Employee F	3,230	2,850	2,090	760
Employee G	1,140	760*	760	
Employee H	760	190	190	
Employee I	1,900	1,900	950	950
Totals	\$16,530	\$14,630[†]	\$11,400	\$3,230

Sources: Bureau of State Audits' analysis of inmates' time sheets and account.

* After we completed our investigation, Employee G provided copies of inmate time sheets showing she met the criteria for two months and was entitled to \$380 of the original amount we identified as improper.

† The Department of Corrections and Rehabilitation was unable to recoup \$1,900 of the amount we identified because the overpayments occurred more than three years before it initiated its recovery efforts.

Corrections reported in January 2009 that it has drafted procedures detailing the proper method of requesting and monitoring inmate supervision pay. It also stated that it plans to inform those who supervise inmates of the requirements and responsibilities associated with receiving the pay. Finally, Corrections reported in April 2009 that the office technicians filed a grievance and it has given the office technicians until May 2009 to produce documents to prove their inmate supervision pay was legitimate.

California Environmental Protection Agency Case I2008-0678

We reported the results of this investigation on October 2, 2008.

An employee of the California Environmental Protection Agency (Cal/EPA) failed to promptly submit time sheets that accurately reported her absences from work and her overtime from August 2006 through June 2008. In addition, the officials responsible for managing her daily activities and for monitoring her time and attendance did not ensure that the employee documented her absences correctly

and that Cal/EPA charged the absences against her leave balances. Consequently, Cal/EPA paid her \$23,320 for 768 hours that she was absent from work.

At the time of our report, Cal/EPA indicated that it had recalculated, updated, and corrected the employee's leave balances to reflect her actual absences and overtime worked through August 2008. In addition, Cal/EPA stated that it planned to establish an accounts receivable for 24 hours the employee's pay should have been docked in September 2006. It also informed us that management issued two counseling memorandums to the employee—one that discussed the employee's failure to promptly submit time sheets that accurately accounted for her absences and another that described the implementation of administrative controls to ensure that the employee correctly accounted for her absences and promptly completed her time sheets and other time-reporting documents. Furthermore, Cal/EPA reported that it planned to transfer the employee to another position with a different assignment that did not require significant overtime. It stated that the new assignment would allow a different supervisor to monitor the employee more closely.

Updated Information

In October 2008 Cal/EPA reported that it had transferred the employee to another program within Cal/EPA where she is more closely monitored by a different supervisor. The employee's new position does not require frequent overtime. In December 2008 Cal/EPA informed us that it had established an accounts receivable to collect \$616 from the employee for pay for which she should have been docked in September 2006. In March 2009 Cal/EPA notified us that it began deductions in December 2008 and stated that it will continue the deductions until it collects the full amount owed to the State.

California Prison Health Care Services Case I2008-0805

We reported the results of this investigation on January 22, 2009.

Staff at California Prison Health Care Services (Prison Health Services), which manages the State's prison medical health care delivery system, ignored state contracting laws and alternative contracting processes established by a federal court when it acquired \$26.7 million in information technology (IT) goods and services in a noncompetitive manner from November 2007

through April 2008. Specifically, Prison Health Services used 49 purchase orders to acquire \$23.8 million worth of IT goods from a single vendor when it should have sought competitive bids. It also contracted with the same vendor to provide \$2.9 million in IT services, again without using a competitive process. Further, staff at Corrections helped to execute the purchase orders for Prison Health Services after initially questioning the propriety of the process used.

At the time of our investigation, Prison Health Services stated that it had obtained approval from the Department of General Services to use a noncompetitively bid contract to continue to use the vendor that was the subject of the report. It also informed us that it had adopted a formal policy governing the use of the federal court's waiver of state contracting laws. Corrections reported that its managers must continue to review contract documentation and abort any transactions that violate applicable contracting requirements.

Updated Information

Prison Health Services reported in March 2009 that employees in its IT acquisitions unit have attended training and that it intends to provide training for all remaining staff within the next six months. Prison Health Services also stated that it distributed its policy on the use of the federal waiver. It also indicated its intent to complete development of the procedures for procuring IT goods and services under existing state processes within 90 days, which will include specifying who has authority to sign contracts and purchase orders under state and alternative contracting processes. Finally, Prison Health Services reported that it is routing all IT procurements to its procurement office to ensure the purchasing method used is appropriate. Prison Health Services stated that it has given that office the authority to halt any procurement that does not meet state laws and regulations.

We conducted this review under the authority vested in the California State Auditor by Section 8547 et seq. of the California Government Code and pursuant to applicable investigative standards.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

Date: April 28, 2009

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Appendix

THE INVESTIGATIONS PROGRAM

The California Whistleblower Protection Act (Whistleblower Act) contained in the California Government Code, beginning with Section 8547, authorizes the Bureau of State Audits (bureau), headed by the state auditor, to investigate allegations of improper governmental activities by agencies and employees of the State of California. The Whistleblower Act defines an *improper governmental activity* as any action by a state agency or employee during the performance of official duties that violates any state or federal law or regulation; that is economically wasteful; or that involves gross misconduct, incompetence, or inefficiency.

To enable state employees and the public to report suspected improper governmental activities, the bureau maintains a toll-free Whistleblower Hotline (hotline): (800) 952-5665 or (866) 293-8729 (TTY). The bureau also accepts reports of improper governmental activities by mail and over the Internet at www.bsa.ca.gov.

The bureau has identified improper governmental activities totaling \$29.1 million since July 1993, when it reactivated the hotline. These improper activities include theft of state property, conflicts of interest, and personal use of state resources. The investigations have also substantiated improper activities that cannot be quantified but have had negative social impacts. Examples include violations of fiduciary trust, failure to perform mandated duties, and abuse of authority.

Although the bureau conducts investigations, it does not have enforcement powers. When it substantiates an improper governmental activity, the bureau reports confidentially the details to the head of the state agency or to the appointing authority responsible for taking corrective action. The Whistleblower Act requires the agency or appointing authority to notify the bureau of any corrective action taken, including disciplinary action, no later than 30 days after transmittal of the confidential investigative report and monthly thereafter until the corrective action concludes.

The Whistleblower Act authorizes the state auditor to report publicly on substantiated allegations of improper governmental activities as necessary to serve the State's interests. The state auditor may also report improper governmental activities to other authorities, such as law enforcement agencies, when appropriate.

Corrective Actions Taken in Response to Investigations

The chapters of this report describe the corrective actions that departments implemented on individual cases. Table A summarizes all of the corrective actions that departments took between the time that the bureau reactivated the hotline in 1993 until June 2002. Table A also summarizes departments' corrective actions since July 2002, when the law changed to require all state departments to notify their employees annually about the bureau's hotline. In addition, dozens of departments have modified or reiterated their policies and procedures to prevent future improper activities.

Table A
Corrective Actions
July 1993 Through December 2008

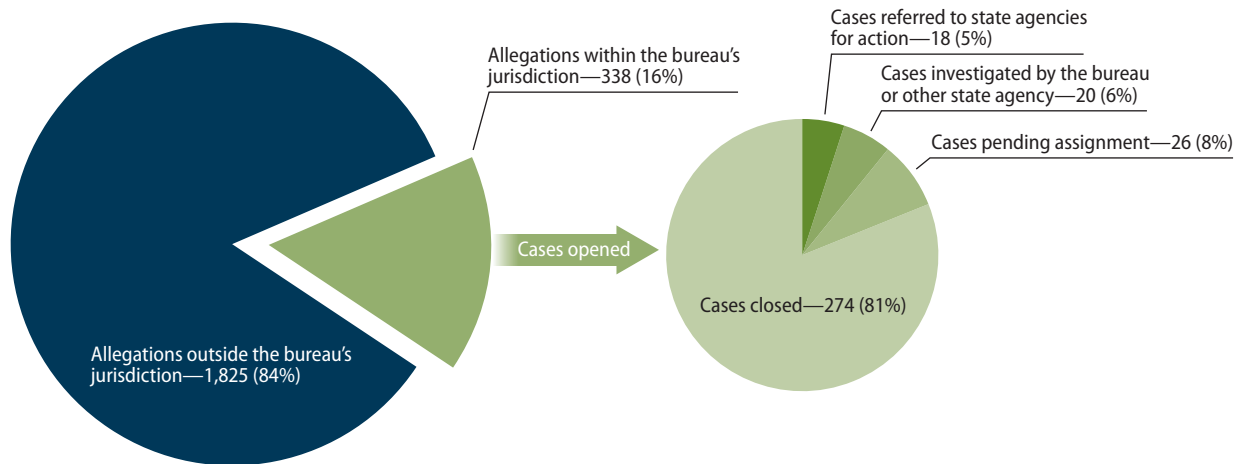
TYPE OF CORRECTIVE ACTION	NUMBER OF INCIDENTS FROM JULY 1993 THROUGH JUNE 2002	NUMBER OF INCIDENTS FROM JULY 2002 THROUGH DECEMBER 2008	TOTALS
Convictions	7	2	9
Demotions	8	8	16
Job terminations	46	30	76
Pay reductions	10	42	52
Referrals for criminal prosecution	73	5	78
Reprimands	135	137	272
Suspensions without pay	12	12	24
Totals	291	236	527

Source: Bureau of State Audits.

New Cases Opened From July 2008 Through December 2008

The bureau receives allegations of improper governmental activities in several ways. From July 1, 2008, through December 31, 2008, the bureau received 2,163 calls or inquiries. Of these, 1,844 came from the hotline, 207 arrived in the mail, 111 were reported through the bureau's Web site, and one came from individuals who visited the office. Of these 2,163 calls or inquiries, the bureau opened 338 cases, as shown in Figure A.1. After careful review, the bureau determined that the remaining 1,825 allegations were outside its jurisdiction. When possible, we referred those remaining complaints to the appropriate federal, state, or local agencies.

Figure A.1
 Disposition of 2,163 Allegations Received From July 2008 Through December 2008



Source: Bureau of State Audits.

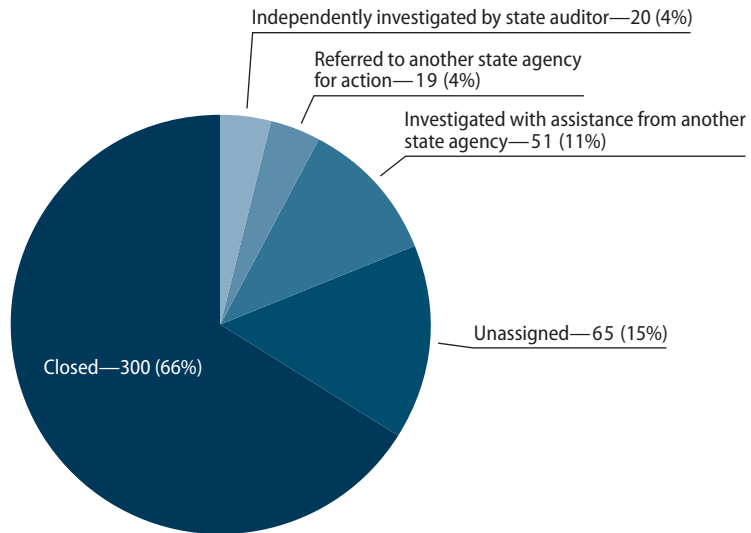
Work on Investigative Cases From July 2008 Through December 2008

In addition to the 338 new cases opened during this six-month period, 73 previous cases needed review or assignment during the period. Another 44 cases were still under investigation by this office or by other state agencies, or they were awaiting completion of corrective action. Consequently, 455 cases required some review during this period.

After conducting a preliminary review of these cases, which includes analyzing evidence and other corroborating information and calling witnesses, the bureau determined that 337 cases lacked sufficient information for an investigation. Figure A.2 on the following page shows the disposition of the 455 cases that the bureau worked on from July 2008 through December 2008.

The Whistleblower Act specifies that the state auditor can request the assistance of any state entity or employee in conducting an investigation. From July 1, 2008, through December 31, 2008, the bureau independently investigated 20 cases and substantiated allegations on five of the seven investigations completed during the period. In addition, the bureau conducted investigative analyses of 51 cases that state agencies investigated under the bureau's direction, and we substantiated allegations in four of the 14 cases completed during the period. After a state agency completes its

Figure A.2
Disposition of 455 Cases Worked on From July 2008 Through December 2008



Source: Bureau of State Audits.

investigation and reports its results to the bureau, the bureau analyzes the agency's investigative report and supporting evidence and determines whether it agrees with the agency's conclusions or whether additional work must take place. The bureau confirmed the results of the four investigations that state agencies substantiated. The results of those investigations appear in this summary report.

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