



JOHN R. KASICH
GOVERNOR
STATE OF OHIO

TO: Department/Agency Directors and Chief Legal Counsels

FROM: D. Michael Grodhaus
Chief Counsel, Governor's Office

DATE: April 7, 2011

SUBJECT: Policy and Procedures for Notification of Suspected Illegal or Improper Activity
within State Departments and Agencies

The purpose of this Memorandum is to set forth the procedures to be followed when illegal or improper activity by any state employee or official is observed, suspected or reported. This Policy sets forth the procedures for processing such allegations and provides for the careful, expeditious handling of all allegations and claims made against state employees. The procedures described herein are not intended to waive or vary any rights or obligations set forth in any Collective Bargaining Agreement and/or any notification requirements imposed by law.

I. Emergency Notification Procedure:

If an illegal activity has been committed, or is in the process of being committed, and an *immediate law enforcement response is necessary* to protect life, physical safety, property and/or to preserve evidence, state employees may call 911. However, if time permits and it can be safely done, it is preferable that the State Highway Patrol's Office of Investigative Services be called first.¹

In central Ohio, the State Highway Patrol Office of Investigative Services can be reached at (614) 752-0234 during normal business hours. After hours, call the Highway Patrol Communications Center at (614) 466-2660. In other areas of the state, reports should be directed to the local State Highway Patrol Post. A trooper will be dispatched to start an investigation.

After the immediate emergency has subsided, the Department Director and/or the Chief Legal Counsel for the Department shall provide information about the incident according to the procedure outlined below.

¹ If there is a need to keep the peace on lands or waters owned, maintained, controlled or regulated by the Ohio Department of Natural Resources (ODNR), employees should call Gary Obermiller at ODNR at (614) 265-7067.

II. Non-Emergency Suspected Illegal Activity Notification Procedure:

A state employee who observes, becomes aware of, or suspects *non-emergency* illegal or improper activity should immediately notify his or her supervisor or the Chief Legal Counsel for the Department and/or the Department Director. If the notification is made to an employee's supervisor, that supervisor should then immediately report the information to the Chief Legal Counsel for the Department and/or the Department Director.² Employees who report conduct that they believe is illegal or improper should have a reasonable factual basis for believing or suspecting that illegal or improper activities have occurred or will occur, and should provide as much specific information as possible to allow for proper assessment of the nature, extent, and urgency of the illegal or improper conduct.

Once such a report is made by an employee, Department Directors, Chief Legal Counsels and department senior staffs must be aware of their obligations to comply with the so-called "whistleblower statutes" found in R.C. §124.341 and R.C. §4113.52. An employee who has properly reported an illegal or improper activity and has otherwise complied with a whistleblower statute cannot be subject to any disciplinary action for making such a report.

Upon receipt of the report of possible illegal or improper activity, the Chief Legal Counsel for the Department and/or the Department Director shall promptly provide the information to (a) the Chief Legal Counsel for the Governor (or his designee), (b) the State Highway Patrol Office of Investigative Services and (c) the Ohio Inspector General (or his designee). To the extent practicable, notification shall be simultaneously provided to the three of them in writing and include the following factual details:³

- a. A description of the activity believed to be illegal or improper;
- b. What action/investigation, if any, has been taken by the Department;
- c. Where the activity occurred;
- d. Name and position of the person(s) suspected of acting illegally or improperly;
- e. Time frame in which the activity is believed to have occurred or will occur;
- f. How and when the Department learned of the activity; and
- g. Department contact person with contact information.

² If an employee observes, becomes aware of or suspects illegal or improper activity by the Department Director, then the employee or supervisor should report the activity to the Chief Legal Counsel and not the Director. The Chief Legal Counsel must then notify the Governor's Office, the State Highway Patrol and the Inspector General according to the procedures below. Likewise, if the purported illegal or improper activity is being conducted by the Chief Legal Counsel, then the employee or supervisor should notify the Director directly who will then notify the Governor's Office, the State Highway Patrol and the Inspector General according to the procedure set forth below.

³ An example of the suggested format for this notification can be found on page 5.

Once the information is received, the Chief Legal Counsel for the Governor, the State Highway Patrol Office of Investigative Services and the Ohio Inspector General, or their respective designees, will promptly and jointly determine whether to open an investigation, and if so, whether the State Highway Patrol will undertake the investigation, whether the Ohio Inspector General will undertake the investigation, or whether it is appropriate for those two agencies to jointly investigate the matter. The Chief Legal Counsel for the Governor, the State Highway Patrol and the Ohio Inspector General may also, when warranted, refer the matter to, consult with or determine to bring into the investigation other appropriate agencies including, but not limited to, the Ohio Ethics Commission, the Ohio Auditor of State, the Ohio Attorney General, a county or city prosecuting attorney, or a local law enforcement agency.

Because a criminal investigation may be initiated as a result of such a report, the Department involved should not conduct an internal investigation unless and until specifically authorized to do so by the appropriate investigating agency. Administrative inquiries and interviews must give way to criminal investigations and no one suspected of illegal activity should be approached, disciplined or placed on administrative leave without such authorization. Upon completion of the law enforcement investigation, the Chief Legal Counsel of the Department in question shall be notified by the appropriate investigating agency.

III. Additional Procedures:

Any state employee who becomes aware of, or suspects, illegal or improper activity by the Governor or any member of his immediate staff may directly contact the State Highway Patrol and the Ohio Inspector General per their contact information below.

In such a case, the State Highway Patrol and the Inspector General shall confer without the Governor's Chief Counsel and decide whether an investigation is warranted, and if so, which agency will conduct the investigation or whether they will jointly investigate the allegation.

Employees observing or suspecting illegal or improper activity always have the option of directly reporting such activity directly to the Ohio Inspector General, the State Highway Patrol, the Ohio Ethics Commission, or any other pertinent law enforcement authority.

IV. Designations and Contact Information:

Governor's Office:

D. Michael Grodhaus, Chief Counsel
(614) 644-0825
michael.grodhaus@governor.ohio.gov

Designee: Kim Kutschbach, Assistant Chief Counsel
(614) 644-0809
kim.kutschbach@governor.ohio.gov

Ohio Inspector General:

Rodney Stewart, First Assistant Deputy Inspector General
(614) 644-9112
Rodney.Stewart@oig.state.oh.us

Designee: James Manken, Chief Legal Counsel
(614) 644-9589
James.Manken@oig.state.oh.us

State Highway Patrol, Office of Investigative Services:

Captain James D. Brink
(614) 466-3375
ospinvest@dps.state.oh.us

CONFIDENTIAL MEMORANDUM

To: [insert designee & contact info]
Office of the Governor

[insert designee & contact info]
Ohio Inspector General

[insert designee & contact info]
Ohio State Highway Patrol

From: (Department Director or Chief Legal Counsel)

Date:

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

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