


Memorandum



Date: March 24, 2005
To: Department Directors
From: George M. Burgess
County Manager
Subject: Information Regarding Whistleblowing (Employee Protection Complaints)



The following memorandum regarding "whistleblowing" provides further clarification and information to those issues surrounding Employee Protection Complaints. Please ensure that this information is distributed to your employees.

What is whistleblowing?

County employees, contractors, and officers "blow the whistle" when they tell the County Manager or another appropriate public authority about a dangerous or illegal activity occurring within the County that seriously impacts citizens. Specifically, the type of activity reported must either:

- Be a violation of law or rule that creates a substantial and specific danger to the public's health, safety, or welfare; or
- Involve gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty.

Examples of dangerous or illegal activities on which a person might blow the whistle include the following:

- A department's gross mismanagement of a program that puts at risk the health and safety of the public;
- A county contractor's submission of false costs or pricing data to a department, which has resulted in an inflated contract price;
- An employee's acceptance of inferior, substitute products, knowing that the products do not meet specifications or have not been tested;
- Any other activities involving gross fraud or cover-ups by government employees, officials, or contractors that endanger the public's health, safety or welfare.

What is the difference between blowing the whistle and other types of complaints a county employee might have?

Generally, whistleblowers expose fraudulent, dangerous or illegal activities that impact a broad group of citizens. In contrast, personnel grievances and issues involving individual employment rights usually do *not* fall into the whistleblower category because these concerns involve only the whistleblower directly, or a select few of his or her colleagues. The appropriate method for resolving such individual complaints is through the County's grievance procedures and other employee complaint procedures.

How does someone blow the whistle?

- Make certain that your allegations are as accurate and as detailed as possible. Convey the facts fairly and dispassionately.
- The allegations must be in writing and signed.
- Aviation Department employees should present their written and signed complaint to the Miami-Dade Commission on Ethics and Public Trust. All other county employees should present their written and signed complaint to the County Manager or his designee. (Your identity will be kept confidential.)
- Cooperate throughout the complaint process and possible investigation.

What legal protection is given to whistleblowers?

State and County laws protect whistleblowers from retaliation in their workplace as a result of exposing government misconduct. County law even offers a financial reward if the County recovers misspent money as a result of the whistleblowing investigation.

To obtain this legal protection, however, whistleblowers must meet all of the following conditions:

- Disclose information on their own initiative in a signed written complaint and present it to the appropriate authority; or
- Participate in an official investigation; and
- Have no involvement in the illegal behavior themselves.

What is the difference between confidentiality and anonymity?

Confidentiality means that the name of the individual making the complaint will not be revealed during the course of the whistleblowing investigation. The law requires that whistleblowers reveal themselves—but only to the appropriate public authority.

Anonymity means that the person making the complaint declines to give his or her name. Whistleblower protection cannot be offered to anonymous accusers because of the need to ask follow-up questions during the investigation.

Can an employee use County resources to blow the whistle?

Complaints made in good faith may necessitate using a minimum amount of county time and/or county resources. Expending an inordinate amount of county time or resources on investigating others' activities, however, is inappropriate as it distracts from the performance of the employee's own regular duties and may subject the employee to disciplinary action. When an allegation requires substantial investigation and employees are fearful of reporting the matter to departmental supervisors, they should report their suspicions to the Miami-Dade Police Department, the State Attorney, the Inspector General, the Ethics Commission or other relevant investigative agency for their consideration and pursuit.

What are the consequences of misusing the Whistleblower Ordinance?

Whistleblowing is not a means for furthering personal vendettas, circulating malicious rumors to defame someone, or making other types of baseless complaints. If you are unsure about your facts and/or motives for blowing the whistle, remember—

- All good faith complaints, even if later proved to be false, are protected.
- Anonymous accusers are not given whistleblower protection. Consequently, those who do not identify themselves to the appropriate public authority are subject to disciplinary actions if their complaints prove to be false and made in bad faith.
- Under county law, any person found to have made a frivolous complaint may be liable for hearing costs and attorneys' fees.

Good faith whistleblowing is a valuable activity that can protect the health and safety, environment, and resources of our community. Frivolous or bad faith complaints, however, deplete public funds and distract county employees from important tasks.

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Further questions?

Additional information about whistleblowing activities may be obtained from any of the following departments:

- Office of the Inspector General at 305-375-1946
or <http://www.miamidadeig.org/>
- Commission on Ethics & Public Trust at 305-579-2594
or <http://www.miamidade.gov/ethics/>
- Employee Relations Department at 305-375-4171
or <http://www.miamidade.gov/emprel/>

Attachment

cc: Assistant County Managers
Christopher Mazzella, Inspector General
Robert Meyers, Executive Director, Commission on Ethics & Public Trust
Donald S. Allen, Director, Employee Relations Department



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EMPLOYEE PROTECTION COMPLAINTS

**LEGISLATIVE INTENT
OF THE MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS**

In 1994, The Board of County Commissioners approved the Employee Protection Ordinance Number 94-107 to ensure protection of employees who disclose specified information regarding unlawful activity, misfeasance or malfeasance by the County or independent contractors to the appropriate authorities for investigation and corrective action.

In order to encourage employees to report such information without fear of reprisal, County policy prohibits adverse action against an employee for disclosing such information to an appropriate official or agency. The Employee Protection Ordinance also provides for monetary awards to employees when the information they disclose leads to the County's recovery of public funds.

SECURING PROTECTION

The Ordinance protects employees who:

- File a written and signed complaint with the County Manager; or
- Participate in an investigation, hearing, or other inquiry conducted by the County, any state agency or federal government entity having the authority to investigate, police, manage, or otherwise remedy the violation or act; or
- Refuse to participate in any adverse action prohibited by this Ordinance.

To ensure protection it is important that employees be proactive and report in writing, the specific information of wrongdoing before the employee suffers retaliation.

NATURE OF INFORMATION DISCLOSED

- (1) Any violation or suspected violation of any federal, state or local law, rule or regulation committed by an employee or agent of the County or independent contractor which creates and presents a substantial and specific danger to the public's health, safety or welfare; or
- (2) Any act or suspected act of gross mismanagement, malfeasance (misconduct or wrongdoing), misfeasance (lawful action performed in an illegal or improper manner), gross waste of public funds, or gross neglect of duty committed by an employee or agent of the County or an independent contractor.

The Ordinance is intended to encourage the disclosure of serious violations of County rules and procedures. It is not intended to address routine personnel disputes and other disagreements, which are covered by other County procedures. Complaints involving such things as breach of a collective bargaining agreement, employment discrimination and violations of the Personnel Rules continue to be governed by other existing procedures applicable to such matters.

Because of the serious nature of these disclosures, employees should describe their concern in sufficient detail with supporting documentation in order for a proper investigation to be conducted. The County Manager will determine the appropriate jurisdiction for conducting the investigation. Employees should also provide their name, mailing address, telephone number, pager or e-mail, so that they can be contacted about their disclosure.

WHAT IF RETALIATION OCCURS?

Under the Employee Protection Ordinance, employees who are suspended; demoted or terminated and have the right to file an appeal under Section 2-47, also have the right to have the Hearing Examiner consider the issue of whether the adverse action was in violation of the Employee Protection Ordinance. Employees must file such appeal within fourteen (14) calendar days to the Director of the Employee Relations Department. The request for appeal must state that the employee is appealing both the disciplinary action under Section 2-47 and the adverse action under the Employee Protection Ordinance. There will be only one appeal hearing.

Employees who do not have the right to file an appeal under Section 2-47 may file a written request for a hearing within sixty (60) calendar days after the adverse personnel action to the Employee Relations Department Director.

In either case the employee's request for a hearing must include:

- (1) An explanation of how the disclosed information, or the participation in an investigation, or the refusal to participate in any adverse action, was in fact a substantial or motivating factor in the alleged retaliation. Supporting documentation should be included.
- (2) The dates of the disclosure to ensure that such disclosure preceded the alleged retaliation.
- (3) A copy of the written and signed complaint to the County Manager.

If frivolous complaints are filed, employees may be directed to pay the cost of the hearing, including the County's attorney's fees.

Based on the Hearing Examiner's findings, conclusions, and recommendations, the County Manager may sustain, reverse or modify the adverse action and may provide relief such as reinstatement or compensation.

WHAT IS AN ADVERSE PERSONNEL ACTION?

An adverse personnel action is a materially adverse change in the employee's working conditions. It includes such things as terminations, demotions, suspensions, and undesirable reassignments. It does not include minor adjustments in assignments, purely lateral transfers, satisfactory evaluations or other matters which do not materially affect an employee's working conditions. Such adverse actions may consist of undue harassment, demeaning or degrading treatment that is contrary to the reasonable authority vested with the management of a department.

APPLICATION FOR MONETARY AWARDS

The Employee Relations Department, in conjunction with the Investigating agency, will notify the employee of the results of the investigation and issue a close out letter with an application for a monetary award, if applicable. Employees who report information which results in the County's recovery of public funds are eligible to request an award of up to ten percent (10%) of the net amount recovered or one hundred thousand dollars (\$100,000), whichever is less. The County Manager selects a panel of three County Administrators to conduct an informal hearing for the purpose of recommending whether an award should be granted and the amount of the award. The panel's written recommendation is submitted to the County Manager who makes the final decision.

<http://www.miamidade.gov/emprel/>

**Questions? Call or write,
Employee Relations Department
Labor Management & Employee Appeal Division
111 NW 1st Street, Suite 2140
Miami, Florida 33128-1907
(305) 375-4171**