


# Agenda Summary Report (ASR)

## Franklin County Board of Commissioners

<b>DATE SUBMITTED:</b> March 5, 2020	<b>PREPARED BY:</b> Jennifer Johnson
<b>Meeting Date Requested:</b> March 10, 2020	<b>PRESENTED BY:</b> Carlee Nave
<b>ITEM:</b> (Select One) <input type="checkbox"/> Consent Agenda <input checked="" type="checkbox"/> Brought Before the Board Time needed: 15 minutes	
<b>SUBJECT:</b> Resolution to Approve and Adopt the amended Whistleblower Policy	
<b>FISCAL IMPACT:</b> zero	
<b>BACKGROUND:</b> The previous policy was adopted in 1993 and hasn't been amended since 1994. The listed personnel no longer work for the county. A lot of the addresses and phone numbers for agencies were no longer valid. The policy was also in several pieces as amendments were done, so this cleans it up and makes it easier for employees to understand and be able to follow. We also wish to add a Fraud and Ethics reporting hotline/online platform to the list of appropriate ways to report improper governmental action. The 3 <sup>rd</sup> party hotline allows reports to remain anonymous if they choose to do so.	
<b>RECOMMENDATION:</b> It is recommended the Board of Franklin County Commissioners review and adopt the Franklin County Whistleblower Policy.	
<b>COORDINATION:</b> Jennifer Johnson, Deputy Prosecuting Attorney Carlee Nave, HR Director Jeff Burckhard, Director of Audit Services	
<b>ATTACHMENTS:</b> 1. Resolution (2) 2. Policy (2)	
<b>HANDLING / ROUTING:</b> 1. Franklin County Commissioners Office 2. Franklin County Human Resource's Office	

*I certify the above information is accurate and complete.*

  
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Name, Title  
Jennifer Johnson, DPA

**FRANKLIN COUNTY RESOLUTION 2020-072**

BEFORE THE BOARD OF COUNTY COMMISSIONERS, FRANKLIN COUNTY, WASHINGTON:

**IN THE MATTER OF COUNTY POLICY REGARDING THE REPORTING OF IMPROPER GOVERNMENTAL ACTION AND PROTECTING EMPLOYEES AGAINST RETALIATION**

**WHEREAS**, the Board of Franklin County Commissioners constitutes the legislative authority of Franklin County; and

**WHEREAS**, RCW 42.41.030 (2) and (3) mandates that local governments adopt a policy to implement the provisions of Chapter 42.41; and

**WHEREAS**, the previous policy was adopted in 1993 (Resolution 93-207) and hasn't been amended since 1994 (resolutions 94-037, 94-060, and 94-319) and listed personnel who no longer work for the county; and

**WHEREAS**, the Board of Franklin County Commissioners wishes to expand and update the previous policy to more comprehensively reflect current practice and add clarity; and

**WHEREAS**, the Board of Franklin County Commissioners wish to add a Fraud and Ethics reporting hotline/online platform to the list of appropriate ways to report improper governmental action;

**NOW, THEREFORE, IT IS HEREBY RESOLVED** that the Franklin County Board of Commissioners does hereby adopt the attached Franklin County Whistleblower Policy.

APPROVED this 10th day of March, 2020.

BOARD OF COUNTY COMMISSIONERS  
FRANKLIN COUNTY, WASHINGTON

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Robert E. Koch, Chair

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Brad Peck, Chair Pro Tem

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Clint Didier, Member

ATTEST:

\_\_\_\_\_  
Clerk of the Board



# FRANKLIN COUNTY WHISTLEBLOWER POLICY

## 1.0 PURPOSE

To establish and maintain a policy for Franklin County to (1) encourage reporting by its employees of improper governmental action taken by Franklin County officers or employees, and (2) protect Franklin County employees who have reported improper governmental actions in accordance with Franklin County's policies and procedures.

## 2.0 PERSONNEL AFFECTED

All personnel, including employees and elected officials.

## 3.0 DEFINITIONS

Consistent with RCW 42.41, the following terms used in this policy shall have the meanings indicated:

3.1 (a) "Improper governmental action" means any action by a County officer or employee:

(i) That is undertaken in the performance of the officer's or employee's official duties, whether or not the action is within the scope of the employee's employment; and

(ii) That is in violation of any federal, state, or local law or rule, is an abuse of authority, is of substantial and specific danger to the public health or safety, or is a gross waste of public funds.

(b) "Improper governmental action" does not include personnel actions including but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of the County collective bargaining and civil service laws, alleged labor agreement violations, reprimands, or any action that may be taken under chapter 41.14 or 41.56 RCW.

3.2 "Retaliatory action" means: (a) Any adverse change in a County's employee's employment status, or the terms and conditions of employment including denial of adequate staff to perform duties, frequent staff changes, frequent and undesirable office changes, refusal to assign meaningful work, unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations, demotion, transfer, reassignment, reduction in pay, denial of promotion, suspension, dismissal, or any other disciplinary action; or (b) hostile actions by another employee towards a County employee that were encouraged by a supervisor or senior manager or official.

3.3 "Emergency" means a circumstance that if not immediately changed may cause damage to persons or property.

#### 4.0 PROCEDURES FOR REPORTING

Franklin County employees who become aware of improper governmental actions should report it immediately.

If the employee feels comfortable, the employee should raise the issue first with their Elected Official or Department Head. The employee shall submit a written report, stating in detail the basis for the employee's belief that an improper governmental action has occurred.

Where the employee reasonably believes the improper governmental action involves their Elected Official or Department Head, the employee may raise the issue directly with County Prosecuting Attorney, or the Franklin County Commissioners.

If the employee feels uncomfortable reporting improper governmental actions to their Elected Official, Department Head, the prosecuting attorney, or the County Commissioners, the employee may use the Fraud and Ethics hotline/online platform. The Fraud and Ethics hotline/online platform reporting link can be found on the Franklin County intranet and/or the Franklin County website homepage. The Fraud and Ethics hotline/online platform allows the employee to remain anonymous, if they choose, from Franklin County as it is run by a 3<sup>rd</sup> party with no direct ties to the County. Once a report is made to the Fraud and Ethics hotline/online platform, the report will be submitted to the Franklin County Fraud and Ethics Complaint administrators, made up of the County employees currently assigned these positions: Administrator, HR Director, Risk Manager, Chief Civil Deputy Prosecutor, Director of Audit Services, Safety Officer, and Security Officer, unless one of these individuals is the subject of the complaint. These employees are tasked with immediately investigating any reports. The hotline/online platform enables the administrators the ability to communicate with the reporter, even if they are anonymous, should additional information or follow up be needed. Reports received in this manner will enjoy the same protections as if the report was filed in person as outlined above if the name of the reporter is known. Anonymous reporters, due to the very nature of

anonymity, cannot not be guaranteed the same protection until their identity is known.

In the case of an emergency, where the employee believes that damage to persons or property may result if action is not taken immediately, the employee may report the improper governmental action directly to the appropriate government agency with responsibility for investigating the improper action. However, if it is not an emergency, the employee is required to follow this policy in good faith.

The Elected Official, Department Head, County Commissioners, or Fraud and Ethics hotline/ online platform administrators, as the case may be, shall take prompt action to assist Franklin County in properly investigating the report of improper governmental action. Franklin County officers and employees involved in the investigation shall keep the identity of the reporting employee confidential to the extent possible under law, unless the employee authorizes the disclosure of their identity in writing. After an investigation has been completed, the employee reporting the improper governmental action shall be advised of a summary of the results of the investigation, except that personnel actions taken as a result of the investigation may be kept confidential.

Franklin County employees may report information about improper governmental action directly to the appropriate government agency with responsibility for investigating the improper action if the Franklin County employee reasonably believes that an adequate investigation was not undertaken by Franklin County to determine whether an improper governmental action occurred, or that insufficient action has been taken by Franklin County to address the improper governmental action or that for other reasons the improper governmental action is likely to recur.

Franklin County employees who fail to make a good faith attempt to follow Franklin County's procedures in reporting improper governmental action shall not receive the protection provided by Franklin County in these procedures.

## 5.0 LIST OF INDIVIDUALS/AGENCIES WITH WHICH TO FILE REPORT

### Franklin County Officials/Departments

- Your Elected Official or Department Head
  
- Franklin County Prosecuting Attorney
  
- Board of County Commissioners

- Fraud and Ethics hotline/online (link located on Franklin County intranet and/or Franklin County website)
- Franklin County Sheriff's Department

#### Regional Departments

- Benton-Franklin County Health District [www.bfhd.wa.gov](http://www.bfhd.wa.gov)
- Ecology Eastern Regional Office [www.ecy.wa.gov](http://www.ecy.wa.gov)

#### State Departments

- Attorney General [www.atg.wa.gov](http://www.atg.wa.gov)
- State Auditor's Office [www.sao.wa.gov](http://www.sao.wa.gov)
- Department of Ecology [www.ecology.wa.gov](http://www.ecology.wa.gov)
- Department of Health [www.doh.wa.gov](http://www.doh.wa.gov)
- Department of Labor and Industries [www.lni.wa.gov](http://www.lni.wa.gov)
- Department of Natural Resources [www.dnr.wa.gov](http://www.dnr.wa.gov)
- Department of Social and Health Services [www.dshs.wa.gov](http://www.dshs.wa.gov)
- Human Rights Commission [www.hum.wa.gov](http://www.hum.wa.gov)
- Liquor and Cannabis Board [www.lcb.wa.gov](http://www.lcb.wa.gov)

#### United States Departments

- Alcohol Tobacco & Firearms [www.atf.gov](http://www.atf.gov)
- Consumer Product Safety Commission [www.CPSC.gov](http://www.CPSC.gov)

- Department of Agriculture [www.usda.gov](http://www.usda.gov)
- Department of Commerce [www.commerce.gov](http://www.commerce.gov)
- Department of Housing and Urban Development [www.hud.gov](http://www.hud.gov)
- Department of Interior [www.doi.gov](http://www.doi.gov)
- Department of Justice [www.justice.gov](http://www.justice.gov)
- Department of Labor [www.dol.gov](http://www.dol.gov)
- Department of Transportation [www.transportation.gov](http://www.transportation.gov)
- Department of Veterans Affairs [www.va.gov](http://www.va.gov)
- Drug Enforcement Administration [www.dea.gov](http://www.dea.gov)
- Environmental Protection Agency [www.epa.gov](http://www.epa.gov)
- Equal Employment Opportunity Commission [www.eeoc.gov](http://www.eeoc.gov)
- Federal Emergency Management Agency [www.fema.gov](http://www.fema.gov)
- Federal Trade Commission [www.ftc.gov](http://www.ftc.gov)
- Food and Drug Administration [www.fda.gov](http://www.fda.gov)
- General Services Administration [www.gsa.gov](http://www.gsa.gov)
- Mine Safety & Health Administration [www.msha.gov](http://www.msha.gov)
- National Transportation Safety Board [www.nts.gov](http://www.nts.gov)
- Nuclear Regulatory Commission [www.nrc.gov](http://www.nrc.gov)
- Office of Inspector General [www.ignet.gov](http://www.ignet.gov)
- Securities and Exchange Commission [www.sec.gov](http://www.sec.gov)
- U. S. Customs and Boarder Protection [www.cbp.gov](http://www.cbp.gov)
- US Department of Occupational Safety & Health [www.osha.gov](http://www.osha.gov)

## 6.0 PROTECTION AGAINST RETALIATORY ACTIONS

Consistent with the Franklin County Anti-Retaliation Policy, Franklin County officials and employees are prohibited from taking retaliatory action against a Franklin County employee because they have in good faith reported an improper governmental action in accordance with these policies and procedures.

Franklin County officials and employees may not use their official authority or influence, directly or indirectly, to threaten, intimidate, or coerce an employee for the purpose of interfering with that employee's right to disclose information concerning an improper governmental action in accordance with the provisions of this chapter.

Employees who believe that they have been retaliated against for reporting an improper governmental action should immediately advise their supervisor, the Elected Official, or the Department Head. Employees may also use the Fraud and Ethics hotline/website. Franklin County officials and supervisors shall take appropriate action to investigate and address complaints of retaliation.

If the employee's supervisor, the Franklin County Elected Official or Department Head, or designee, as the case may be, does not satisfactorily resolve a Franklin County employee's report of retaliation in violation of this policy, the Franklin County employee may obtain protection under this policy pursuant to state law by providing a written notice of the charge of retaliatory action to the Franklin County Commissioners that:

- A) Specifies the alleged retaliatory action; and
- B) Specifies the relief requested.

Franklin County employees shall deliver of their written charge to the Franklin County Commissioners no later than thirty days after the occurrence of the alleged retaliatory action. Franklin County shall respond within thirty days to the charge of retaliatory action.

After receiving either the response of Franklin County or thirty days after the delivery of the charge to Franklin County, the Franklin County employee may request a hearing before a state administrative law judge to establish that a retaliatory action occurred and to obtain appropriate relief provided by law. An employee seeking a hearing should deliver the request for hearing to the Franklin County Prosecutor within the earlier of fifteen days of delivery of Franklin County's response, or forty-five days of delivery of the charge of retaliation to Franklin County for response.



Upon receipt of request for hearing, Franklin County shall apply within five (5) working days to the State Office of Administrative Hearings for an adjudicative proceeding before an administrative law judge:

Office of Administrative Hearings  
P. O. Box 42488  
Olympia, WA 98502  
(360) 407-2700  
(800) 583-8271  
[www.oah.wa.gov](http://www.oah.wa.gov)

The employee, as the initiating party, must prove their claim by a preponderance of the evidence. The administrative law judge shall issue a final decision consisting of findings of fact, conclusions of law, and judgment no later than forty-five days after the date the request for hearing was delivered to the County. The administrative law judge may grant specific extensions of time beyond this period of time for rendering a decision at the request of either party upon a showing of good cause, or upon their own motion.

Relief that may be granted by the administrative law judge consists of reinstatement, with or without back pay, and/or such injunctive relief as may be found to be necessary in order to return the employee to the position they held before the retaliatory action and to prevent any recurrence of retaliatory action. The administrative law judge may award costs and reasonable attorneys' fees to the prevailing party.

If a determination is made that retaliatory action has been taken against the employee, the administrative law judge may, in addition to any other remedy, impose a civil penalty personally upon the retaliator of up to three thousand dollars payable by each person found to have retaliated against the employee and recommend to the County that any person found to have retaliated against the employee be suspended with or without pay or dismissed.

The final decision of the administrative law judge is subject to judicial review under the arbitrary and capricious standard. Relief ordered by the administrative law judge may be enforced by petition to superior court.

7.0 Nothing in this section authorizes an individual to disclose information prohibited by law.

8.0 REPEALER

As of the date of adoption of this Whistleblower Policy by the Board of County Commissioners, any and all prior Whistleblower Policies are hereby repealed and superseded by this Whistleblower Policy.