



STATE OF WASHINGTON

OFFICE OF THE CORRECTIONS OMBUDS

2700 Evergreen Parkway NW • Olympia, Washington 98505

January 23, 2020


Steve Sinclair, Secretary
Department of Corrections (DOC)

Office of the Corrections Ombuds (OCO) Investigative Report

Attached is the official report regarding the OCO investigation into an allegation of retaliation against a person incarcerated in the Monroe Correctional Complex – Special Offender Unit. We appreciate the opportunity to work collaboratively with DOC to amend current policies and practices to better ensure that the rights of incarcerated persons are protected while they are within state confinement.

Any member of the public who wishes to report a concern to OCO is welcome to contact the office at (360) 664-4749 or at the address above. All concerns are logged into the OCO database and used as part of its overall reporting to policymakers and analysis of issues within DOC.

Sincerely,


Joanna Carns
Director

cc: Governor Inslee

**OCO INVESTIGATION
INVESTIGATION CONDUCTED BY CHRISTY KUNA, ASSISTANT OMBUDS –
WESTERN DIVISION**

Summary of Complaint/Concern

On January 8, 2019, OCO received complaints that alleged the following:

- The complainant had filed DOC grievances against kitchen staff since 05/2017 in relation to unfair treatment, discrimination/racism, and concerns of staff misconduct. He stated the issues had occurred while employed under the supervision of Correctional Industries (CI) in the Special Offenders Unit (SOU) kitchen at Monroe Correctional Center (MCC). The complainant alleged that DOC staff erroneously disregarded reported staff misconduct complaints as non-grievable issues, failed to hold staff accountable for actions proven to be true through DOCs own investigative processes, and that DOC staff often sent grievances back for re-write verses working on the reported issues.
- The complainant alleged that details of an incident which occurred between himself and his supervising CI staff were fabricated by the staff as a form of retaliation for his use of the DOC grievance program. He claimed that on 06/25/2018, the supervising CI staff falsely accused him and inflected him of “refusing an order” (refusing to leave the area) and “disruptive behavior” (yelling at her for 10 minutes). The complainant stated that it was the staff who had been yelling, acting unprofessional, and had called him a racist. Subsequently he was terminated from his MCC SOU CI employment on 07/17/2018. The complainant stated that at the time of the 06/25/2018 incident, he had a staff misconduct grievance investigation against the staff which was appealing to level III and had filed a series of prior grievances against the staff for misconduct concerns.
- On 06/28/2018 the complainant filed an additional staff misconduct grievance which resulted in another investigation. Once the investigation was completed, the complainant discovered the investigator found in favor of the staff, reporting that staff had done nothing wrong. He stated the investigation was not done correctly and the process was biased in favor CI staff. The complainant pointed out that the investigator assigned to the case was also in charge of the MCC CI kitchens and did not like him for filing complaints against kitchen staff. He claimed that the investigative process itself was retaliatory and violated confidentiality, impartiality, and provided misinformation. The complainant stated that during his investigative interview, the investigator allowed for the accused staff to be present and that his two witnesses were interviewed together while the accused staff was present. The complainant stated that he provided witness statements to the investigator, but that they were not taken into account for the report, and the report did not represent witness testimony accurately.

OCO Statutory Authority

- Per RCW 43.06C.005, OCO was created to assist in strengthening procedures and practices that lessen the possibility of actions occurring within DOC that may adversely impact the

health, safety, welfare, and rehabilitation of incarcerated persons, and that will effectively reduce the exposure of DOC to litigation.

- Per RCW 43.06C.040, OCO has the authority to receive, investigate, and resolve complaints related to incarcerated persons' health, safety, welfare, and rights.

OCO Investigative Actions

- OCO initially gathered facts for review at the onset of this case to determine how to progress. After a review of initial information, OCO then sent DOC a notice of investigation on 04/17/2019. As part of this investigation process, OCO reviewed DOC policy in regard to employment of incarcerated individuals, the grievance program, and grievance investigation processes, staff conduct expectations, and the disciplinary process for incarcerated individuals. OCO also reviewed multiple related grievances, reviewed infraction reports and disciplinary hearing information, reviewed the DOC staff misconduct investigation report and other supporting documents, and made contact to incarcerated individuals and various DOC staff.

OCO Findings

- OCO substantiated that there were several concerns related to DOC responses to grievances filed by the complainant.
- OCO also found multiple concerns as related to the investigative process and staff misconduct investigation report.
- OCO could not substantiate the allegation of retaliation due to lack of evidence, but acknowledges that retaliation is often difficult to prove in a corrections setting and that lack of evidence does not mean that retaliation did not occur.

This report will be broken into sections addressing the following concerns: (1) Concerns related to the investigation and investigative report; (2) Investigator training concerns; and (3) Issues related to grievance procedures.

Concerns Related to the Investigation Process and Investigative Report

OCO found that the investigative process was improperly done, biased, violated confidentiality and violated other procedural expectations. OCO found that the report was significantly flawed, contained opinion, was missing information and was conducted by an investigator that was not impartial.

- OCO verified that there was an incident between the complainant and his CI supervisory staff that had occurred on 06/25/2018. Infraction reports show that the complainant was infractions for disobeying orders and disruptive behavior. According to the infraction report, staff stated the complainant had been, "verbally pugnacious about getting in trouble" and "...did not comply to my requests several times to leave the I[K] (kitchen)". It was also

noted that a custody staff was present and had also asked the complainant to return to his unit but “he continued to be disruptive”.

- The complainant was infracted for both general infractions. The disciplinary hearings recording was requested for review, but DOC stated that there was no hearings record available and no electronic record could be located by OCO when attempted.
- The incident reports for this incident could not be located by DOC or by OCO in the electronic file maintained by DOC.
- The attending custody staff said to have been present for the 06/25/2018 incident is no longer employed with DOC and was not available for questioning by OCO.
- In follow up to the incident, on 06/28/2018 the complainant had filed a staff misconduct complaint against his CI supervisory staff, indicating that the information reported against him was false information created by the staff as a form of retaliation for his use of the grievance program.
 - OCO was able to verify that the complainant had filed multiple grievances against his CI supervisory staff for concerns of racism, discrimination and staff misconduct. At the time of the 06/25/2018 incident, the complainant had appealed to level III on a separate staff misconduct grievance which was open on the CI supervisory staff. The investigator was the same person assigned to investigate both concerns.
- OCO research found that the assigned investigator had been involved in prior grievance investigations that the complainant had filed against the same supervising CI staff and was familiar with the complainant. OCO also found that the investigator assigned did run the kitchens at MCC and appeared to be in the chain of command over the supervising CI staff being grieved.
 - In her own interview with OCO, the investigator admitted to knowing the accused staff citing that there was a developed history working in CI together. The investigator also stated she was familiar with the complainant because he, “...has a history of causing issues within the kitchen” and that he is, “...known for his complaints”; she described him as, “being problematic”.
 - When OCO asked the investigator if she thought there was any concern of her being assigned the investigation when she knew the staff being investigated and had a clear opinion about the complainant, the investigator she stated she did not think it was a concern.
- OCO found that during the grievance investigation, no facility surveillance video was requested or reviewed in relation to the 06/25/2018 incident. When OCO asked the investigator why video had not been requested for the case, the investigator stated that they had not thought to make a request for video. When asked if she had been trained to request evidence such as video, the investigator replied she, “...had never been trained to conduct a

staff misconduct investigation before...” When asked how she had made her conclusion without video evidence, she stated she had based her conclusion off staff statements.

- Most DOC facility video is available for approximately 30 days. Video review for this case could have identified the actions as they occurred between the complainant and the CI staff during the 06/25/2018 incident.
- For an investigation to be thorough, all evidence must be reviewed and taken into consideration to make a conclusion. To make a decision based solely off of staff statements does not support that this investigation was thorough.
- The investigative report, completed on 08/02/2018 is very short, contains spelling and grammatical errors and lacks clarity necessary to identify actions or isolate facts which are required to formulate a well-informed conclusion to the investigation.
 - During her interview with OCO, the DOC investigator was allowed to review her own report. After talking about the report, the investigator openly stated the report was “poorly written” and that there were things that could have been done differently.
 - The investigator shared how staff are appointed to do investigations outside their already established workload. She mentioned that DOC should provide staff better training in relation to investigative expectations and that staff should have reduced duties during the time of investigation processes so they can do what is needed for thorough investigations.
- OCO verified that confidentiality was not preserved during the course of the investigative interview processes. The investigator documented in the report that the complainant and the accused staff were interviewed together at the same time. This information was verified by the complainant as well as the investigator during independent interviews with OCO.
 - The investigator stated she chose to have the accused staff in the room with the complainant because she “did not think there was anything wrong with it” and the complainant had expressed wanting to speak to the accused about the situation. In follow up interviews, the complainant clarified to OCO that he had requested to speak to the supervisory CI staff but intended for this to be done after the investigative process in hopes to “get things out in the open” so he could move forward and return to work. He stated that he did not expect to be in an interview with the accused CI supervisory staff and he did not expect it to occur in the investigative process nor replace his right to a confidential interview with the investigator. When the investigator was asked about her interview process she stated she did not think it was an issue since, “they hashed things out” during the conversation.
 - There are no investigative interview summaries attached to this investigation that represents what questions were asked, or what answers were provided for either the complainant or the accused staff.

- The complainant stated that he was never given any opportunity for a confidential, private interview. He reported that in the interview where the accused staff was present, the investigator was telling him that he “files too many grievances” and that she did not think that the accused had done anything wrong. He stated the accused stood there and denied any wrongdoing and he felt as though he was not being heard.
- When OCO spoke to the accused supervisory CI staff, she reported that she had NOT been in the room during the complainant’s interview. Her statement is a direct contradiction of the investigator’s own report, the information provided to OCO by the investigator as well as what had been reported to OCO by the complaint. The presence of contradictory information causes concern for truthfulness in what has been reported by the staff.
- The supervisory CI staff stated that when the investigator interviewed her, they were in a room alone with the door closed. The investigator told OCO that she never provided any other interview to the complainant or the accused outside of the interview where they were together. Again, the presence of contradictory information causes concern for truthfulness in what has been reported by the staff.
- The investigator stated in the report that the complainant had given the names of two witnesses. Since the accused staff was interviewed at the same time as the complainant, OCO finds concern that names of the witnesses were possibly disclosed in the presence of the accused staff.
- Initially upon review, it was not clear in the report if the two witnesses named by the complainant had been interviewed by the investigator. During the OCO interview with the investigator, OCO learned the investigator had interviewed the two witnesses at the same time, together. The investigator also made the decision to interview the witnesses in the kitchen area where that they are both employed and the accused staff is employed as a supervising staff. Again, confidentiality was not preserved during the course of these interviews and the interview was not held in a neutral environment.
 - One witness stated that he was in the kitchen area when the accused staff had come to him and instructed him to go to the staff office. When he entered the office, the investigator was already sitting at the desk in the room and was waiting for him. He stated another witness was also present when he arrived and that he noted the accused staff stood in the doorway and listened to their conversation.
 - OCO found concern that the identity of both witnesses was not kept confidential in the investigative process. Both witnesses confirmed to OCO that there was no confidentiality when they were interviewed by the investigator. Both witnesses provided statements supporting that they were interviewed together and that the accused staff had also stayed present during their interview. They both provided details showing that the lack of privacy made them feel uncomfortable and intimidated. One witness stated that it had placed him in a very tough position since he reported directly to the accused staff and

they had always maintained a good relationship. He felt that if he were to speak openly, he would get his job taken away.

Investigative Note: Both witnesses have since lost their employment within the kitchen.

- The investigator was asked about the accused being present for the witness interview, but stated she did not recall the accused staff being present. The accused staff also denied being present.
- There are no investigative interview summaries attached to this investigation that represents who was present, when the interview occurred or where. There is no sure way to establish what questions were asked, or what answers were provided by either witness. When asked if investigators are required to prepare interview summaries for staff misconduct cases the investigator stated that she did not know if it was required or not. Both witnesses stated that the information documented in the report is not what they provided to the investigator. Both witnesses indicated during their interviews to OCO, that staff falsified the information and that it was the accused, not the complainant who had been yelling and disruptive on 06/25/2018.
- One witness recalled that when the complainant was asked to leave, he left with a kitchen custody staff without incident.
- The investigator was questioned about interviewing the witnesses at the same time. When asked if investigators receive training on the preservation of confidentiality and interview processes, she stated she had not received training and she did not feel there was any concern with speaking to the witnesses at the same time or in the non-neutral location.
- OCO has concern that by interviewing both witnesses together, without observing their right to privacy, the investigator compromised the integrity of the investigation and improperly influenced the statements provided by each of them.
- OCO has concern that interviewing the two witnesses in a non-neutral environment also could have impacted their statements.
- In the investigative report, the investigator made an unclear, brief mention that on 07/23 the complainant had given her a “letter” which was from the two witnesses regarding the 06/25/2018 incident. The investigator provided no details on the contents of the letter in the investigative report. The investigative report includes a section for the investigator to identify documents consulted and in the report she makes no mention of the letter.
 - The complainant reported to OCO that he had provided the assigned investigator with witness statements, which he states proved his innocence in relation to the accusations made by his supervisory CI staff. He stated that both witnesses provided information that supported he had not been yelling or disruptive on 06/25/2018 and that it had been the accused CI supervisory staff who had been yelling, unprofessional and had called the complainant “a racist”. The complainant shared his concern that this information had

purposefully been left out of the investigation process because the information supported his innocence. The complainant stated he had made a request for the documents to be returned so he could appeal his complaint to level III, but the investigator did not reply to his request and the documents were never returned to him.

- During the interview with OCO, the investigator initially denied being given a letter or witness statements. After reviewing her report and being showed where she had referenced being provided the letter, the investigator still could not recollect the letter or its contents but admitted it must have occurred since it was in her report. When asked why she did not provide details of the letter in the report she stated she was not sure why she had not included it. When OCO asked what the statements said, the investigator could not recall. When OCO asked for the letter, the investigator stated should was unsure where the letter was. When asked if there a requirement to take all evidentiary documents into consideration, and include them in the report the investigator recognized that, "...things could have gone differently".
- During the investigation, OCO was provided with two written declarations, each signed by the two witnesses who were present for the 06/25/2018 incident. The declarations were dated for September of 2018. These statements were reviewed by their authors during individual OCO interviews and each confirmed the information as true and correct. OCO learned that these statements were created in response to the outcome of the DOC investigative report. Both witnesses stated the information provided by the investigator was false in the report.
 - Both witnesses state in their written statements, as well as during their OCO interviews, that when they spoke to the investigator, they did not report that the complainant had yelled, been disruptive or disobeyed a direct order on 06/25/2018.
 - One witness reported that on 06/25/2018, he did hear the accused staff make a comment to the complainant that he was a racist.
 - One witness stated that the accused staff had actually been the person yelling on 06/25/2018. He stated that the staff was acting unprofessional.
 - One witness stated in his written statement that he did not hear the other witness provide information supporting the information written in the DOC investigative report. He stated he was standing right next to the other witness and therefore he would have heard all comments made.
 - During the interview with OCO, one witness stated that he had been near the second witness the entire time of their interview and he did not hear anything as reported by the investigator in her report.
 - Both witnesses stated that the information provided in the investigatory report was nothing like what had told the investigator nor what they had documented in their original witness statements.

- The investigative report provides little to no information on the types of questions asked to individuals involved. The report does not contain a clear synopsis of interviews and there are no attached interview summaries for any of the individuals related to the case. Through the report, it is unclear if some of the statements are those made by individuals interviewed or opinions held by the investigator. The lack of interview summaries, makes it impossible to review/validate the information documented in the report.
 - The investigative report fails to cite witness statements, consulted incident reports or disciplinary documents or relevant policy reviewed during the investigative process. The investigation includes no attached copies of information or records that would have been reviewed in a thorough investigation. It is unclear if these documents were reviewed or how the investigator came into the information which is documented as fact in the report.
 - The investigator states matter-of-factly, that the complainant did not like working for the accused and that the accused did nothing wrong. The investigator boldly states that she found no evidence of staff misconduct but in each claim, the investigator fails to build a foundation to support this comment. This statement appears to be the investigator's opinion and it appears this information is biased.
- Several documentation concerns were identified with the investigator's report. The investigative report has a form called, "Grievance Investigator's Checklist". This document is meant to inform the investigating staff on the requirements when conducting an investigation and what to include in the report. This form clearly outlines DOCs expectations for the report process and supporting documents/evidence. This form was incomplete at the time of the report closure. The form states, "The following checklist contains items that **must** be addressed in your report":
 - "**Interview:** Include the date, time and location of each person interview and a synopsis of their testimony". Then lists the Grievant, Employees grieved, all employees/contract staff/volunteers [and] witnesses named in the grievance. Offender witnesses named (up to 2) and others as necessary. In this investigative report it is not clear if the witnesses were interviewed.
 - "**Review:** Appropriate records, correspondence, Kites, ect." Pertinent policies, procedures, RCW's".
 - In this investigative report, there is no checkmark on, "All employees/contract staff/volunteers [and] witnesses named in the grievance" or "Offender witnesses named (up to 2)", verifying that these actions took place.
- The "Grievance Investigator's Checklist" states, "You must attach copies of all pertinent information and records reviewed that lead to your final determination and investigative report. There are no supporting documents added to this investigative report.

- The investigator was shown the checklist and when asked why it was not followed, she stated she did not feel it was necessary since she thought the issue was handled at the “lowest level” and the issue “was managed”.

Investigator Training Concerns

OCO finds that the investigator was not properly trained, lacked clarity on investigative expectations and/or failed to utilize proper investigative methods.

- The Investigator stated this was one of their first staff conduct cases and that they had received little to no training on procedural expectations for a staff conduct case or witness interview expectations.
 - The investigator did not request/review surveillance video in relation to the 06/25/2018 incident. When asked if requesting time sensitive evidence such as video is something investigating staff are trained to do she replied that she had not received training to conduct staff misconduct investigations.
 - The investigator did not think speaking to the witnesses at the same time was a breach of confidentiality nor did the investigator see the importance of a neutral location for interviewing. The investigator did not recognize the concerns for influenced reporting or factors of staff intimidation.
 - The investigator did not think interviewing the complainant and the accused at the same time was a breach of confidentiality or could be a concern of staff intimidation.
 - The investigator admitted to having a pre-standing opinion of this complainant and a working relationship with the accused staff, yet did not consider the need to recuse herself from the investigation process. In most investigative processes recusal from the investigation would be expected.
 - In the report, the investigator concluded with a very opinionated statement which was not supported by a complete body of evidence. When asked how she had come to the conclusion she stated she based the information off staff statements. When asked if her statement was fact based or opinion based she stated that there was “no proof” that staff had done anything wrong.
 - The investigator failed to include witness statement documents they were provided during the course of the investigation. The investigator failed to document the contents of the documents into the report.
 - The DOC “Grievance Investigator’s Checklist” was incomplete.
 - It is not clear if there is any in-service annual training for staff authorized to conduct staff misconduct investigations nor is there clarity on how much investigative training staff get prior to taking on these investigations.

Issues Related to the Grievance Procedure

OCO found that the complainant filed several grievances leading up to and after the incident which occurred on 06/25/2018. OCO found that on multiple occasions, the incarcerated individual attempted to address concerns of staff conduct, staff retaliation, staff harassment, and intimidation practices but that DOC erroneously responded by; finding the reported staff misconduct/retaliation/harassment as a non-grievable issue or they returned the grievance to the complainant for rewrite or closed without looking into the concern.

- It is clear in policy and the “Offender” Grievance Program Manual that incarcerated individuals may grieve actions of employees and retaliation against an “offender” for good faith participation in the grievance program:
 - The complainant filed a grievance on 06/28/2018 citing staff misconduct in the form of retaliation. He outlined how his supervising CI staff had purposefully provided false information about the incident on 06/25/2018 which resulted in disciplinary action. He explained that the retaliation was due to his prior use of the grievance program against the supervising staff. He clearly stated in the complaint that he was grieving the behaviors of the staff and that he was not attempted to appeal or address the infraction in the complaint. The DOC Grievance Coordinator responded that the issue was “not a grievable issue” since DOC employees cannot be grieved for “writing infractions”. No additional action was taken in relation to the concerns of retaliation/inappropriate staff misconduct. The grievance coordinator failed to appropriately address the reported concern of retaliation.
 - The complainant filed a second grievance on 06/28/2018 citing staff misconduct on a second staff whom had been present for the 06/25/2018 incident. The complainant explained his concern that the DOC staff member had fabricated information on an incident report to support the false information provided by his supervising CI staff. Again, he made it clear that he was grieving the concern of staff misconduct. Again, the grievance coordinator responded that the issue was “not a grievable issue” since DOC employees cannot be grieved for writing infractions. No additional action was taken in relation to the concerns of retaliation/inappropriate staff conduct. The grievance coordinator failed to appropriately address the reported concern of retaliation.
 - The complainant had submitted a grievance on or about 07/20/2018 which stated that when leaving the “chow hall” on 07/13/2018, he was speaking to a staff about the fact that he had been fired and the staff commented, “I know, you were fired because you are suing everybody.” The complainant stated the statement was proof that being fired was an act of retaliation and it related to his original complaints against his supervising CI staff. In response, DOC investigated the concern and in response stated that the investigation into the concern and recognized that the staff admitted to making the comment, but stated the comment was made in a “joking manner” to attempt to “lighten the tone of the conversation”. Staff then provided the following written response on the grievance, “The comment was made, it was made as a joke, and does not change the outcome of your termination.” No additional action was taken in relation to the concerns

of retaliation/inappropriate staff conduct in relation to the comment made. In this case, the concern of unprofessional conduct appears to have been substantiated, but did not appear to be addressed by DOC. According to the “Offender” grievance program manual; “When a staff conduct grievance is found to have merit, the report and response should note that corrective actions has been/will be taken and provide a date for that action when known.”

- In relation to the concern of retaliation and termination from employment which was also within this grievance, DOC re-reviewed the concern related to why he had been terminated from his position. DOC responded that the reason for his termination was not retaliation for his litigation and that he was fired for the infractions related to 06/25/2018, the behavioral observation entries (BOE) from kitchen staff and “on-going problematic behaviors” in the kitchen. No further action was to be taken by DOC. OCO found during the investigation that the complainant was given two infractions on 06/25/2018 and prior to this incident, the last infraction the complainant received was dated for 2013. The complainant has only had five infractions since 2010. Also the only negative behavioral observation entries (BOE) he had from the kitchen were made by the accused supervisory CI staff and appear to begin after his grievances against the kitchen in 2017. OCO also found in a prior investigative report in 2018 that the investigator had cited that this complainant was an excellent worker whom was topped out at pay and level for his good work and that he should continue his efforts.
- The complainant filed a grievance on or around 07/30/2018 citing that he had given the investigator witness statements, and that he had learned that the investigator had interviewed the witnesses together in the presence of the accused. He described the concern as a strategic way to undermine the investigation and put witnesses under pressure. He states that he wanted the witness statements returned to him as he intended to advance his complaint to a level III. He pointed out that he had sent the investigator a kite with this request, without response. The grievance coordinator sent this complaint back for a re-write since the complainant had described two concerns. It was clear there was a concern for staff misconduct/retaliation, but this concern was overlooked on a technicality that could have easily been addressed.
- The complainant filed a follow up grievance on 08/03/2019 again citing that the investigator had interviewed the witnesses together in the presence of the accused as a way to retaliate against him. He again described the concern as a strategic way to undermine the investigation and put witnesses under pressure. The DOC grievance coordinator responded that the issue was “not a grievable issue”. On 08/07/2018- he appealed the response and the grievance coordinator noted that she had sent the complaint to DOC HQ for review.
- On 08/01/2018, the complainant had also written to the DOC HQ Grievance Program Manager and expressed concern over the investigative interview process and how the investigator spoke to the witnesses together and in front of the accused staff. DOC HQ Grievance Program Manager responded on 08/14/2018 that “Page 12 of the Offender Grievance Program Manual states, complaints and grievance will not be discussed or

shared with staff or offenders not actively involved in the resolution of the grievance unless there are safety/security concerns.” He was then told he could file a complaint if he had concern that a violation had occurred. On 08/17/2018, the DOC HQ Grievance Program Manager wrote a letter to the complainant and copied the Grievance Coordinator explaining that they were approving the grievance to be re-opened as a grievable issue and to follow the directives of the Grievance Coordinator. The complainant entered his complaint again stating he was appealing. In response on 09/01/2018 the Grievance Coordinator stated the claim was “3rd party/hearsay” and not acceptable. Also this complaint was noted as going past “20 working days” and since the complainant had failed to follow directives the complaint was “not accepted” and closed 09/06/2018.

Outcomes

- OCO asked for this case to be reviewed by DOC. The DOC HQ Grievance Program Manager at the time responded and stated it was reviewed in OMNI and they concluded that there was no witness intimidation.¹
- DOC added retention of perishable evidence – audio and video – to the Grievance Investigator’s Checklist and included it as part of the training that all persons assigned to conduct grievance investigations are required to receive.

Recommendations

- DOC should ensure that the staff conduct investigative process is thorough, appropriate and conducted by a neutral and impartial investigator.
 - Establish a DOC-wide recognized process for staff misconduct investigation processes, and ensure that anyone authorized to conduct a staff misconduct investigation has received proper training in order to properly and thoroughly execute the investigation.
 - DOC should require that investigative interview summaries are documented and provided as an attachment to all investigative processes.
 - DOC should require that all interviews are conducted in confidential and private locations.
 - DOC should require that all investigators are unbiased, impartial, and without conflicts of interest for the assigned investigation.
 - All evidence provided to an investigator needs to be included in or attached to the report.
- DOC appointing authorities should ensure that the “Grievance Investigator’s Checklist” has been completed in full and that all items have been attached to the investigative report, prior to accepting a report as completed.

¹ The person holding the position has since retired.

- DOC should better define when allegations of staff misconduct, such as retaliation or providing false information, should be separately investigated, even if the underlying issue is non-grievable.

DOC RESPONSE TO THE OCO REPORT

*the full response, with attachments, is separately provided on the OCO website



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February 19, 2020

Joanna Carns
 Office of Corrections Ombuds
 PO Box 43113
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Dear Ms. Carns:

The Washington Department of Corrections appreciates the opportunity to respond to the OCO Report on the ‘OCO investigation into an allegation of retaliation against a person incarcerated at Monroe Correctional Complex – Special Offender Unit’ completed by the Office of Corrections Ombuds.

Recommendation	Response
<p>DOC should ensure that the staff conduct investigative process is thorough, appropriate and conducted by a neutral and impartial investigator.</p>	<p>Beginning on February 10, 2020, the new statewide grievance manager began with the Department of Corrections. As a former OCO assistant ombuds, the new statewide grievance manager has already been immersed in medically-related grievances and DOC’s process. Additionally, she has read the final results of the OCO Grievance Workgroup report and will be collaborating with facility leadership to move Corrective Action Plan (CAP) items forward to restructure processes moving forward.</p> <p>Currently, grievance investigator training has been made available online through LMS and all staff involved in researching and investigating responses are required to complete the training. The statewide grievance manager and correctional program administrator have scheduled a statewide grievance training for March 2020 that will include all specialists and assistants to roll out the CAPs and provide them local assignments to complete at their respective locations.</p> <p>As presented at the February superintendents’ meeting, there is to be consideration given on “who” is assigned staff conduct investigations</p>

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	to ensure that a “neutral and impartial investigator” is assigned. This will be followed by monthly data gathering and quarterly reports to provide updates on program efficiencies and/or performance gaps.
Establish a DOC-wide recognized process for staff misconduct investigation processes, and ensure that anyone authorized to conduct a staff misconduct investigation has received proper training in order to properly and thoroughly execute the investigation.	The Department has now made the grievance investigation training more accessible by creating an online LMS training module, which was implemented on January 6, 2020. The training is now available for completion by all department staff and is required for completion by all staff who conduct grievance investigations. Please see exhibit C
DOC should require that investigative interview summaries are documented and provided as an attachment to all investigative processes.	As part of the training being delivered in early March, the statewide grievance manager and correctional program administrator will roll out examples of thorough interview summaries so that facility grievance specialists can provide 1:1 training to investigators at their locations. As part of the update to DOC 05-311 <i>Grievance Investigation Expectations</i> , language will be added to include verbiage that states the form can only be signed as completed if all referenced attachments and summaries are attached. The form was updated February 13, 2020. The training will instruct specialists to review the investigator report to ensure all areas are covered and attachments included. If there appear to be deficiencies, the specialist will meet with the investigator to clarify the need for the missing information and return of a completed packet. Please see Exhibits A and B
DOC should require that all interviews are conducted in confidential and private locations.	Policy 550.100 <i>Offender Grievance Program</i> will be revised by the agency during calendar year 2020. The grievance coordinator training will be taking place on March 4, 2020, and the



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	<p>correctional program administrator has disseminated a reminder email to all investigators about the need for confidential and private locations when conducting interviews. In addition, the correctional program administrator has sent the intent to add this language into the policy during the planned revision later in 2020.</p> <p>Please see Exhibits D and F</p>
<p>DOC should require that all investigators are unbiased, impartial, and without conflicts of interest for the assigned investigation.</p>	<p>The Department is updating the correctional worker core grievance program training curriculum, the grievance program manual, Policy 550.100 <i>Offender Grievance Program</i>, and the grievance coordinator orientation to emphasize that grievances should be investigated and responded to in an unbiased and impartial manner.</p> <p>Please see Exhibit E</p>
<p>All evidence provided to an investigator needs to be included in or attached to the report.</p>	<p>As part of the training being delivered in early March, the statewide grievance manager and correctional program administrator will roll out examples of thorough interview summaries so that facility grievance specialists can provide 1:1 training to investigators at their locations. As part of the update to DOC 05-311 <i>Grievance Investigation Expectations</i>, language will be added to include verbiage that states the form can only be signed as completed if all referenced attachments and summaries are attached. The form was updated February 13, 2020. The training will instruct specialists to review the investigator report to ensure all areas are covered and attachments included. If there appear to be deficiencies, the specialist will meet with the investigator to clarify the need for the missing information and return of a completed packet.</p> <p>Additionally, DOC Policy 420.375</p>

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	<p><i>Contraband and Evidence Handling</i> was recently updated and a memo of procedure will be added, if necessary, to define grievance evidence handling and disposal.</p> <p>Please see Exhibits A and B</p>
<p>DOC appointing authorities should ensure that the "Grievance Investigator's Checklist" has been completed in full and that all items have been attached to the investigative report, prior to accepting a report as completed.</p>	<p>Policy 550.100 <i>Offender Grievance Program</i> will be revised by the agency in 2020. An email has been sent to the policy office to please incorporate these changes in the upcoming policy revision. In addition, the <i>Grievance Investigation Expectations</i> form 05-311 has been updated and implemented on February 13, 2020, to reflect that an investigation is not complete unless the entire form has been completed and all investigative items are attached and signed before a report is completed.</p> <p>Please see Exhibits A and B</p>
<p>DOC should better define when allegations of staff misconduct, such as retaliation or providing false information, should be separately investigated, even if the underlying issue is non-grievable.</p>	<p>The correctional program administrator and the statewide grievance manager will be working with human resources (HR) to determine language or "situations" that should prompt the investigator to immediately meet with superintendent/designee over concerns of staff misconduct. Even in a circumstance where a grievance may be found non-grievable or unfounded, there may be clear concerns for misconduct that occurred during a situation with the grievant that should be looked into further. It will be up to the superintendent/designee to review the investigator's concerns with HR to decide if additional actions must occur.</p>

The information provided by the OCO was useful to ensure the Department of Corrections is doing everything it can to ensure an incarcerated person's time in the agency's facilities is a fair and safe space for all incarcerated individuals.

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We also appreciate your team's understanding of the unique processes across facilities and the addition of policies and procedures being put in place to address them. We are working towards proactivity and improving quality assurance processes throughout the department. Moving forward, Washington Department of Corrections will continue to collaborate with the Office of the Corrections Ombuds to implement additional policies, procedures, and security measures to continue to improve the facility operations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Steve Sinclair".

Steve Sinclair, Secretary
Washington Department of Corrections