The Whistle-blower’s Act
Sections 112.3187-112.31895, Florida Statutes
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Sponsored by:
The Chief Inspector General and the Florida Chapter of the Association of Inspectors General

Topics for Discussion
- Chief Inspector General Responsibilities
- Agency Inspectors General Responsibilities
- Main sections of the Whistle-blower’s Statute
- Whistle-blower Protocol
- Best Practices
- Training Exercise
- Questions and Answers

Chief Inspector General Responsibilities
- Section 14.32, Florida Statutes (F.S.) created the Office of the Chief Inspector General (CIG) within the Executive Office of the Governor.
- Under section 14.32(2)(f), F.S., the CIG shall coordinate the activities of the Whistle-blower’s Act pursuant to Chapter 112, F.S. and maintain the Whistle-blower’s Hotline.
- Under Section 14.32(2)(i), F.S., the CIG shall act as liaison and monitor the activities of the inspectors general in the agencies under the Governor’s jurisdiction.
Florida Inspectors General
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Chief Inspector General

Topics for Discussion

- Chief Inspector General Responsibilities
- Agency Inspectors General Responsibilities
- Main sections of the Whistle-blower’s Statute
- Whistle-blower Protocol
- Best Practices
- Training Exercise
- Questions and Answers

Agency Inspectors General Responsibilities

- Section 20.055, F.S., states that an Office of Inspector General (OIG) is established in each state agency to provide a central point of coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government.
- Section 20.055(7) states that in carrying out the investigative duties and responsibilities, each inspector general shall (a) Receive complaints and coordinate all activities of the agency as required by the Whistle-blower’s Act pursuant to Sections 112.3187 – 112.31895, F.S.

Questions and Answers
Main Sections of the Whistle-blower’s Statute

- S. 112.3187, F.S. Retaliation Protection
- S. 112.3188, F.S. Confidentiality
- S. 112.3189, F.S. Complaint Investigative Procedures
- S. 112.31895, F.S. Retaliation Investigative Procedures

S. 112.3187, F.S., Retaliation Protection

- Legislative Intent
- Key definitions:
  - Employee
  - Independent contractor
  - Adverse personnel action
- Actions prohibited
- Nature of information disclosed
- To whom information is disclosed
- Employees and persons protected
- Remedies
- Relief, defenses and existing rights

Sections 112.3187-112.31895, F.S. Legislative Intent

- To prevent agencies or independent (agency) contractors from taking retaliatory action against an employee or independent contractor who reports violations of law which creates a substantial or specific danger to the public’s health, safety, or welfare.
- To prevent agencies or independent (agency) contractors from taking retaliatory action against any person who discloses information alleging improper use of a governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee.
Section 112.3187, F.S., Retaliation Protection

Key Definitions

- “Employee” means a person who performs services for, and under the control and direction of, or contracts with, an agency or independent contractor for wages or other remuneration.

- “Independent contractor” means a person, other than an agency, engaged in any business and who enters into a contract, including a provider agreement, with an agency.

** Sub contractors are not covered under this definition. **

Actions Prohibited

An agency or independent contractor shall not:

- Dismiss, discipline, or take any other adverse personnel action against an employee for disclosing information pursuant to the provisions of this section.

- Take any adverse action that affects the rights or interests of a person in retaliation for the person's disclosure of information under this section.
Section 112.3187, F.S., Retaliation Protection

Nature of Information Disclosed
- Any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a substantial and specific danger to the public’s health, safety, or welfare.
- Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency or independent contractor.

To Whom the Information is Disclosed
Any agency or federal government entity having the authority to investigate, police, manage, or otherwise remedy the violation or act, including, but not limited to:
- The Office of the Chief Inspector General
- An agency Inspector General or the employee designated as agency Inspector General
- The Florida Commission on Human Relations
- The Whistle-blower’s Hotline

** For concerns about local government entities, information must be disclosed to a chief executive officer or other appropriate local official. **

Employees and Persons Protected
Employees and persons protected include those:
- Who disclose information on their own initiative in a written and signed complaint; or
- Who are requested to participate in an investigation, hearing, or other inquiry; or
- Who refuse to participate in any adverse action prohibited by this section; or
- Who file any written complaint to their supervisory officials; or
- Who submit a complaint to the CIG, the Agency Inspector General, Whistle-blower’s Hotline, or to the Florida Commission on Human Relations.
Section 112.3187, F.S., Retaliation Protection
Remedies

- Employees of or applicants for employment with a state agency file with the Florida Commission on Human Relations.
- Local public employees file with the appropriate local governmental authority.
- All others (independent contract employees), after exhausting all available contractual or administrative remedies, file a civil action in court.

Remedies

Relief - In any action brought under this section, the relief must include the following:
- Reinstatement of the employee to the same position held before the adverse action was commenced, or to an equivalent position or reasonable front pay as alternative relief.
- Reinstatement of the employee’s full fringe benefits and seniority rights, as appropriate.
- Compensation, if appropriate, for lost wages, benefits, or other lost remuneration caused by the adverse action.
- Payment of reasonable costs, including attorney’s fees, to a substantially prevailing employee, or to the prevailing employer if the employee filed a frivolous action in bad faith.
- Issuance of an injunction, if appropriate, by a court of competent jurisdiction.
- Temporary reinstatement to the employee’s former position or to an equivalent position, pending the final outcome on the complaint.
Section 112.3187, F.S., Retaliation Protection
Relief, Defenses, and Existing Rights (continued)

Defenses - It shall be an affirmative defense to any action
brought pursuant to this section that the adverse action was
predicated upon grounds other than, and would have been
taken absent, the employee’s or person’s exercise of rights
protected by this section.

Existing Rights - Sections 112.3187-112.31895 do not diminish
the rights, privileges, or remedies of an employee under any
other law or rule or under any collective bargaining agreement
or employment contract; however, the election of remedies in
s. 447.401 also applies to whistle-blower actions.

Main Sections of the
Whistle-blower’s Statute

- S. 112.3187, F.S. Retaliation Protection
- S. 112.3188, F.S. Confidentiality
- S. 112.3189, F.S. Complaint Investigative Procedures
- S. 112.31895, F.S. Retaliation Investigative Procedures

Section 112.3188, F.S., Confidentiality

- Individual Confidentiality
- Information Confidentiality
- Exceptions
- When a Report Becomes Public
- Penalty for Breach
Section 112.3188, F.S., Confidentiality

Individual Confidentiality

The name or identity of any individual who discloses in good faith to the Chief Inspector General or an agency inspector general, a local chief executive officer, or other appropriate local official information that meets criteria may not be disclosed to anyone other than a member of the Chief Inspector General’s, agency inspector general’s, internal auditor’s, local chief executive officer’s, or other appropriate local official’s staff.

Information Confidentiality

Except as specifically authorized, all information received by the Chief Inspector General or an agency inspector general or information produced or derived from fact-finding or other investigations conducted by the Florida Commission on Human Relations or the Department of Law Enforcement is confidential and exempt from public records if the information is being received or derived from allegations as set forth in paragraph (1)(a) or paragraph (1)(b), and an investigation is active.

Exceptions

- The name or identity of the whistle-blower may not be disclosed without the written consent of the individual, unless the Chief Inspector General, internal auditor, agency inspector general, local chief executive officer, or other appropriate local official determines that: the disclosure of the individual’s identity is necessary to prevent a substantial and specific danger to the public’s health, safety, or welfare or to prevent the imminent commission of a crime; or the disclosure is unavoidable and absolutely necessary during the course of the audit, evaluation, or investigation.

- Information disclosed under this subsection may be disclosed only to persons who are in a position to prevent the danger to the public’s health, safety, or welfare or to prevent the imminent commission of a crime based on the disclosed information.
Section 112.3188, F.S., Confidentiality

When a Report Becomes Public

Except for active criminal intelligence or criminal investigative information, and except as otherwise provided in this section, all information obtained pursuant to this subsection shall become available to the public when the investigation is closed or ceases to be active. An investigation is closed or ceases to be active when the final report has been sent by the Chief Inspector General to the recipients specified under Florida Statute.

Penalty for Breach

Any person who willfully and knowingly discloses information or records made confidential under this section commits a misdemeanor of the first degree, punishable as provided in Sections 775.082 or 775.083, F.S.

Main Sections of the Whistle-blower’s Statute

- S. 112.3187, F.S. Retaliation Protection
- S. 112.3188, F.S. Confidentiality
- S. 112.3189, F.S. Complaint Investigative Procedures
- S. 112.31895, F.S. Retaliation Investigative Procedures
Section 112.3189, F.S. Complaint Investigative Procedures

- Requirement for the Whistle-blower’s Hotline
- Determination Factors
- Review Period
- Factors Used to Determine that an Investigation is not Necessary
- Subsequent procedures
- Investigative Guidelines
- Investigation Closure Process

Section 112.3189, F.S., Complaint Investigative Procedures

Requirement for the Whistle-blower’s Hotline

To facilitate the receipt of information, the CIG shall maintain an in-state toll-free Whistle-blower’s Hotline.

Section 112.3189, F.S., Complaint Investigative Procedures

Determination Factors

- Whether the source of the information is a person who is an employee or former employee of, or an applicant for employment with, a state agency.

- Whether the information actually disclosed demonstrates reasonable cause to suspect that an employee or agent of an agency or independent contractor has violated any federal, state, or local law, rule, or regulation, thereby creating and presenting a substantial and specific danger to the public’s health, safety, or welfare, or has committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty.
Section 112.3189, F.S., Complaint Investigative Procedures

Review Period

- When a person alleges information described in Section 112.3187(5), F.S., the CIG or agency inspector general actually receiving such information shall, within 20 days of receipt, determine whether the information meets the criteria.

- The CIG or agency inspector general making such a determination shall then conduct an investigation, unless the CIG or the agency inspector general determines, within 30 days after receiving the allegations from the complainant, that such investigation is unnecessary.

Factors Used to Determine that an Investigation is not Necessary

- The gravity of the disclosed information compared to the time and expense of an investigation.

- The potential for an investigation to yield recommendations that will make state government more efficient and effective.

- The benefit to state government to have a final report on the disclosed information.

Factors Used to Determine that an Investigation is not Necessary (continued)

- Whether the alleged whistle-blower information primarily concerns personnel practices that may be investigated under chapter 110 (i.e., sexual harassment, affirmative action/EEO).

- Whether another agency may be conducting an investigation and whether any investigation under this section could be duplicative.

- The time that has elapsed between the alleged event and the disclosure of the information.
Section 112.3189, F.S., Complaint Investigative Procedures

Subsequent Procedures

If the CIG or agency inspector general determines that an investigation is not necessary, the CIG or agency inspector general making such determination shall:

• Copy and return, upon request of the complainant, any documents and other materials provided by the individual who made the disclosure.

• Inform the state agency head in writing that the investigation is not necessary and the individual who made the disclosure of the specific reasons why an investigation is not necessary and why the disclosure will not be further acted on under this section.

Investigative Guidelines

The agency inspector general shall:

• Conduct an investigation with respect to the information and any related matters.

• Submit to the complainant and the CIG, within 60 days after the date on which a determination is made, a final written report.

• Advise the complainant in writing that they may submit comments on the final report within 20 days of the date of the report and that such comments will be attached to the final report.

• Ensure final reports required under this section are reviewed and signed by the person responsible for conducting the investigation (agency inspector general, agency head, or CIG). Extension requests may be granted by the CIG for good cause shown.

• Notify the CIG and the Florida Department of Law Enforcement if an investigation under this section produces evidence of a criminal violation and the report shall not be transmitted to the complainant.

Investigation Closure Process

• Upon receiving a final report, the CIG shall review the report and determine whether the report contains the required information. If the report does not contain the information required, the CIG shall determine why and note the reasons on an addendum to the final report.

• The CIG shall transmit any final report under this section, any comments provided by the complainant, and any appropriate comments or recommendations by the CIG to the Governor, the Legislative Auditing Committee, the investigating agency, and the Chief Financial Officer.
Main Sections of the Whistle-blower’s Statute

- S. 112.3187, F.S. Retaliation Protection
- S. 112.3188, F.S. Confidentiality
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Section 112.31895, F.S., Retaliation Investigative Procedures

The procedures in this Section of the statute are primarily the responsibility of the Florida Commission on Human Relations.

112.31895(1) - Investigative procedures in response to prohibited personnel actions

(a) If a disclosure under s. 112.3187 includes or results in alleged retaliation by an employer, the employee or former employee of, or applicant for employment with, a state agency, as defined in s. 216.011, that is so affected may file a complaint alleging a prohibited personnel action, which complaint must be made by filing a written complaint with the Office of the Chief Inspector General in the Executive Office of the Governor or the Florida Commission on Human Relations, no later than 60 days after the prohibited personnel action.

(b) Within three working days after receiving a complaint under this section, the office or officer receiving the complaint shall acknowledge receipt of the complaint and provide copies of the complaint and any other preliminary information available concerning the disclosure of information under s. 112.3187 to each of the other parties named in paragraph (a), which parties shall each acknowledge receipt of such copies to the complainant.
Topics for Discussion

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- Main sections of the Whistle-blower’s Statute
- Whistle-blower Protocol
- Best Practices
- Training Exercise
- Questions and Answers

Agency Inspectors General Responsibilities

- Assess and document the receipt of all complaints to determine if provisions of the Whistle-blower’s Act may apply. The initial assessment shall be documented;
- Complete whistle-blower determinations within statutory timeframes;
- Submit written extension requests for good cause to the Office of the Chief Inspector General (OCIG) when statutory timeframes cannot be met, regardless of whether the complaint was received through the OCIG or the Agency Office of Inspector General (OIG);
- Provide determination notification letters to complainants.

Chief Inspector General Responsibilities

- Refer potential whistle-blower complaints received to the appropriate OIGs for whistle-blower determination;
- Maintain a record in the OCIG database of the following whistle-blower related complaints:
  - Complaints which the OIG has determined meet whistle-blower requirements;
  - Potential whistle-blower complaints which originated in the OCIG (regardless of final whistle-blower determination);
  - Complaints which the OIG requested consultation with the OCIG regarding a whistle-blower determination;
  - Complaints which required a whistle-blower determination extension from the OCIG beyond the statutory timeframe;
- Grant whistle-blower determination extension requests received in writing from OIG’s for good cause shown;
- Provide consultation upon request to OIG’s regarding whistle-blower determinations.
Florida Inspectors General

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Proper Planning
Know Your Complaint
Identify Applicable Governing Directives
Identify Potential Team Members
Address Each Allegation Fully
Allegations vs. Additional Findings
Keep Identity Confidential
Obtain Specifics

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Proper Planning
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Training Exercise

Do the Allegations Rise to Whistle-blower Status?

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Questions and Answers

THANK YOU FOR PARTICIPATING

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