

REGIONAL TRANSIT AUTHORITY

RESOLUTION NO. 87

A RESOLUTION of the Board of the Regional Transit Authority for the Pierce, King, and Snohomish Counties region establishing policy and procedures for reporting improper governmental actions and protecting employees against retaliation.

WHEREAS, as provided by Chapter 42.41 RCW, public employees should be encouraged to disclose improper governmental actions of government employees; and

WHEREAS, reports of improper governmental actions should be investigated in a timely manner, and action should be taken where appropriate; and

WHEREAS, protection should be given to the rights of employees of the Regional Transit Authority (the "RTA") who report improper governmental actions related to the functions and operations of the RTA; and

WHEREAS, remedies should be provided to any employees of the RTA who are subjected to retaliation for making reports of improper governmental actions; and

WHEREAS, any local government, as defined in RCW 42.41.020(2), that adopts its own program for reporting alleged improper governmental actions and adjudicating retaliation resulting from such reporting is exempt from Chapter 42.41 RCW; and

WHEREAS, the adoption of a reporting program that is consistent with Chapter 42.41 RCW and that recognizes the unique mission of the RTA is in the best interests of the public;

NOW, THEREFORE, BE IT RESOLVED by the Board of the Regional Transit Authority as follows:

Section 1. **Policy.** It is the policy of the Regional Transit Authority (the "RTA"):

A. To encourage reporting by its employees of improper governmental actions taken by its employees; and

B. To protect its employees who have reported improper governmental actions in accordance with its policy and procedures.

Section 2. Definitions. As used in the RTA's policy and procedures, the following terms shall have the meanings indicated:

A. "Improper governmental action" means any action by an employee:

1. That is undertaken in the performance of the employee's official duties, whether or not the action is within the scope of employment; and

2. That (a) is a violation of any applicable federal, state or local law or regulation; or (b) is a clear abuse of authority; or (c) creates a substantial and specific danger to the public health or safety; or (d) is a gross waste of public funds.

"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 collective bargaining and civil service laws, alleged labor agreement violations, or reprimands.

B. "Retaliatory action" means:

1. Any adverse change in an employee's employment status, or the terms and conditions of employment; or

2. Hostile actions by another employee towards an employee that were encouraged by a supervisor or senior manager.

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

D. "Employee" means any employee of the RTA, including the Executive Director, the Board Administrator, and other officers and officials of the RTA as determined by the Executive Director.

Section 3. Reporting Improper Governmental Actions.

A. Employees who have information concerning improper governmental actions should provide such information in writing to the Executive Director, or such other person as may be designated by the Executive Director to receive reports of improper governmental action. A written report shall include the following information: employee name, name(s) of those engaged in misconduct, date(s) the misconduct occurred, the basis for the employee's claim of improper governmental action, and any evidence supporting such a claim. In lieu of a written report, an employee may use the form provided as Attachment A to this resolution. Alleged improper governmental actions by the Executive Director shall be reported to the Board Chair.

B. In the case of an emergency, where the employee believes in good faith 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 identified on Attachment B to this resolution. At the earliest opportunity after reporting, however, the employee shall submit a written report, or the form provided as Attachment A, to the Executive Director, the Executive Director's designee, or the Board Chair, as appropriate.

C. The protection of the RTA's policy and procedures are available only to employees who make a good faith attempt to follow the procedures set forth in this resolution.

D. The identity of a reporting employee shall be kept confidential to the extent possible under law, unless the employee authorizes the disclosure of his or her identity in writing.

E. Any questions regarding the intent or requirements of the RTA's policy and procedures should be directed to the Executive Director or the Executive Director's designee.

Section 4. Investigating Reports of Improper Governmental Actions.

A. Upon receiving specific written information concerning alleged improper governmental action, the Executive Director, or the Executive Director's designee shall, for a period not to exceed thirty (30) days, conduct such preliminary investigation of the matter as he or she deems appropriate.

B. The Executive Director, or the Executive Director's designee shall notify the Board Chair upon the commencement of such an investigation.

C. If it appears to the Executive Director, or the Executive Director's designee after completing the preliminary investigation that the matter is so unsubstantiated that no further investigation or action is warranted, he or she shall prepare a memorandum summarizing the results of the investigation and the determination. A summary of the memorandum, except the portion(s) which relate to personnel actions, shall be provided to the employee who provided the information which initiated the investigation.

D. If it appears to the Executive Director, or the Executive Director's designee after completing the preliminary investigation that the matter does not meet the definition of improper governmental action, but does warrant some further review, he or she shall prepare a memorandum summarizing the results of the investigation and the corrective or advisory actions taken or to be taken. A summary of the memorandum, except the portion(s) which relate to personnel actions, shall be provided to the employee who provided the information which initiated the investigation.

E. If it appears to the Executive Director, or the Executive Director's designee after completing the preliminary investigation that the action may fall within the definition of improper governmental action and that further investigation or action is warranted, the Executive Director, or the Executive Director's designee shall so notify the employee who provided the information which initiated the investigation and shall conduct a further investigation and prepare a report.

F. If the Executive Director, or the Executive Director's designee determines that an employee has engaged in improper governmental action, he or she shall report the nature and details of the activity to the Executive Committee of the Board. Upon receipt of that determination and after consultation with the Executive Committee of the Board, the Executive Director shall determine whether to inform the authorities identified in Attachment B and/or to take any other action deemed appropriate by the Executive Committee. The Executive Director

shall also provide a summary of the results of the investigation to the employee who provided the information which initiated the investigation.

G. The same procedures shall be followed concerning reports of alleged improper governmental actions by the Executive Director, except the Board Chair shall serve in the role of the Executive Director.

H. Action by the Executive Director or the Board Chair, as appropriate, shall complete the reporting and investigation process.

Section 5. Reporting Retaliatory Actions.

A. The RTA is prohibited from taking retaliatory action against an employee because he or she in good faith reported an improper governmental action in accordance with the RTA's policy and procedures.

B. An employee who believes that he or she has been retaliated against for reporting an improper governmental action must submit a written notice of the charge of retaliatory action to the Executive Director that: (1) specifies the alleged retaliatory action; and (2) specifies the relief requested. Where the employee believes in good faith that the retaliatory action involves the Executive Director, the employee may raise the issue directly with the Board through the Board Chair, or such other person as may be designated by the Board to receive reports of retaliatory action.

C. The charge of retaliatory action shall be delivered to the Executive Director no later than thirty (30) days after the occurrence of the alleged retaliatory action. The employee shall cooperate fully in any subsequent investigation by the Executive Director, including providing evidence to support the charge.

Section 6. Responding to Reports of Retaliatory Actions.

A. The RTA shall respond in the following manner:

1. The Executive Director shall consider the charge, conduct an appropriate investigation, and respond in writing to the charge of retaliatory action and request for relief within thirty (30) days of receiving the charge; or

2. If the employee alleges that the retaliatory action was taken by the Executive Director, the Board Chair or the Board's designee shall consider the charge, conduct an appropriate investigation, and respond to the charge of retaliatory action and request for relief within thirty (30) days of receiving the charge.

3. The Executive Director's or Board Chair's response shall indicate whether or not a preponderance of the evidence submitted or developed by the investigation supports the charge. The response also shall address appropriate relief, if required, including reinstatement with or without pay, and corrections in the employee's personnel records.

B. Upon receiving the response of the RTA (or after the last day upon which the RTA could respond), the employee may request a hearing to establish that a retaliatory action occurred, if such action is denied in the response or to obtain appropriate relief as defined in this resolution, if the relief awarded in the response is deemed inadequate. The request for a hearing shall be delivered to the RTA within fifteen (15) days of receiving the response (or within fifteen (15) days of the last day on which the RTA could have responded).

C. Within five (5) working days of receipt of the request for hearing, the RTA shall apply to the State Office of Administrative Hearings for an adjudicative proceeding before an administrative law judge. Except as otherwise provided in this resolution, the hearing proceedings shall comply with RCW 34.05.410 through 34.05.598.

D. The employee, as the initiating party, must prove his or her 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 (45) days after the date the request for hearing was delivered to the RTA. 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 his or her own motion.

E. Relief that may be recommended to the Executive Director by the administrative law judge may include reinstatement, with or without back pay, and such injunctive relief as may

be found to be necessary in order to return the employee to the position he or she held before the retaliatory action and to prevent any recurrence of retaliatory action.

F. In addition, the administrative law judge may impose a civil penalty personally upon the retaliator of up to THREE THOUSAND DOLLARS (\$3,000) payable by each person found to have retaliated against the employee and/or the administrative law judge may recommend that the RTA suspend, with or without pay, or dismiss the retaliator. All penalties recovered shall be paid to the local government administrative hearings account created in RCW 42.41.060.

G. The recommendation of the administrative law judge, if any, shall be given significant weight by the RTA in making a final determination.

H. The final decision of the administrative law judge and the RTA 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.

Section 7. Prohibiting Intimidation of Employees. Employees are prohibited from using 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 RTA's policy and procedures.

Section 8. Responsibilities.

A. The Executive Director or the Executive Director's designee is responsible for implementing the RTA's policy and procedures for:

1. Reporting improper governmental action;
2. Investigating reports of improper governmental action;
3. Protecting employees against retaliatory actions; and
4. Prohibiting intimidation of employees.

B. The Executive Director or the Executive Director's designee shall ensure that:

1. A summary of the RTA's policy and procedures are permanently posted where all employees will have reasonable access to them;

2. The RTA's policy and procedures are made available to any employee upon request;
3. The reporting form is made available to any employee upon request; and
4. The RTA's policy and procedures are provided to all newly-hired employees.

C. Officers, managers and supervisors are responsible for ensuring that the procedures are fully implemented within their areas of responsibility.

ADOPTED by the Board of the Regional Transit Authority for the Pierce, King and Snohomish Counties region at a regular meeting thereof held on the 22 day of May, 1997.



Bob Drewel
Chair of the Board

ATTEST:



Marcia Walker
Board Administrator

ATTACHMENT A

REPORT OF IMPROPER GOVERNMENTAL CONDUCT

Date Report Filed: _____, 19__	Report filed with: _____
--------------------------------	--------------------------

Reporting employee: _____ Telephone: (____) _____
Title: _____
Address: _____

Name(s) and title(s) of person(s) engaged in improper conduct:

Date(s) of conduct: _____

Please describe the improper conduct as specifically as possible (attach additional pages if necessary):

Identify any evidence or information that supports or explains this report, and explain its relevance:

The information in this report is true to the best of my knowledge and belief.

(employee signature)

The names of employees reporting improper governmental conduct will be kept confidential to the extent possible under law. An employee may, however, authorize the release of his or her name in writing. If you wish to release your name, you may do so by signing below.

I, _____, authorize the release of my name in connection with the above report of improper governmental conduct.

(employee signature)

ATTACHMENT B

List of Agencies

Following is a list of agencies responsible for enforcing federal, state and local laws and investigating other issues involving improper governmental action. Employees having questions about these agencies or the procedures for reporting improper governmental action are encouraged to contact the Executive Director or the Executive Director's designee.

Local Agencies

King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000

Snohomish County Prosecuting Attorney
3000 Rockefeller Avenue, MS 504
Everett, Washington 98201
(206) 388-3333

Pierce County Prosecuting Attorney
946 County City Building
930 Tacoma Avenue South
Tacoma, Washington 98402
(206) 591-7740

State Agencies

Attorney General's Office
Fair Practice Division
2000 Bank of California Center
900 Fourth Avenue
Seattle, Washington
(206) 464-6684

Department of Labor & Industries
300 West Harrison, Room 201
Seattle, Washington 98109
(206) 281-5400

Auditor's Office
Dexter Horton Building
710 Second Avenue
Seattle, Washington 98104
(206) 625-2854

Department of Natural Resources
P.O. Box 68
Enumclaw, Washington 98022
(206) 825-1631

State Agencies (continued)

Department of Ecology
3190 - 160th S.E.
Bellevue, Washington 98008-5852
(206) 649-7000

Puget Sound Water Quality Authority
P.O. Box 40900
Olympia, Washington 98504
(360) 493-9300

Human Rights Commission
402 Evergreen Plaza Building, FJ-41
711 South Capitol Way
Olympia, Washington 98504-2490
(360) 753-6770

Federal Agencies

Environmental Protection Agency
Criminal Investigations
1200 Sixth Avenue
Seattle, Washington
(206) 553-8306

National Transportation
Safety Board
19518 Pacific Highway South
Seattle, Washington
(206) 764-3782

Equal Employment
Opportunity Commission
2815 Second Avenue, Suite 500
Seattle, Washington 98178
(206) 553-0968

Department of Transportation
Office of Inspector General
915 Second Avenue
Seattle, Washington 98178
(206) 553-5720

Federal Emergency
Management Agency
130 - 228th Street S.W.
Bothell, Washington
(206) 487-4600

United States Attorney's Office
800 Fifth Avenue
Seattle, Washington 98104
(206) 553-7970

Department of Labor
Occupational Safety and Health
1111 Third Avenue, Suite 715
Seattle, Washington 98101-3212
(206) 553-5930

SUMMARY OF POLICY AND PROCEDURES FOR REPORTING IMPROPER GOVERNMENTAL ACTION

AND FOR PROTECTING EMPLOYEES REPORTING SUCH ACTIONS

Employees of the Regional Transit Authority ("RTA") are encouraged to disclose improper governmental actions of other RTA employees. A copy of the complete reporting procedures and protections for employees is available from the Executive Director or the Executive Director's designee. The reporting procedures and protections for reporting employees are summarized below.

Reporting Procedures

? Employees with information concerning improper governmental action should ordinarily give a written report of the action to the Executive Director or the Executive Director's designee. The report should state the basis for the claim and identify evidence supporting the claim. In the case of an emergency, however, employees may report directly to the appropriate investigative agency without first submitting a written report.

? Reporting employees' identities shall be kept confidential to the extent possible under law.

Protections for Employees

Employees who make a good faith effort to follow the RTA's policy and procedures for

reporting improper governmental action will receive the following protections:

? The RTA shall not take retaliatory action against such employees.

? Employees who believe they have been retaliated against must submit written notice to the Executive Director. The notice should specify the alleged retaliatory action and the relief requested. It must be delivered to the Executive Director within 30 days after the alleged retaliatory action has occurred.

? Reporting employees may request a hearing to establish that the retaliatory action occurred and to obtain relief.

? Relief that may be granted includes reinstatement, with or without back pay, returning employees to their position before the retaliatory action, and steps to prevent further retaliatory action. In addition, retaliators may be suspended with or without pay, be dismissed, or a civil penalty of up to \$3,000 may be imposed.