



King County

King County Ombudsman's Office

FINDINGS AND CONCLUSION

Whistleblower Complaint No. 2007-01714
Respondent: King County Medical Examiner's Office
January 29, 2010

ALLEGATION

On August 23, 2007, the King County Ombudsman's Office received a complaint alleging improper governmental action at the King County Medical Examiner's Office (KCMEO). The complaint was made pursuant to the King County Whistleblower Protection Code, section 3.42.020(c).

The complaint filed by former KCMEO employee Robinette Struckel¹, was 16 pages in length and alleged several violations in the KCMEO between 2001 and 2007. Following an initial review of the complaint, the Ombudsman's Office initiated an investigation into the following allegations:

- Inappropriate semen collection practices.
- Improper disposal of human brain tissue following autopsies.
- Improper treatment of fetal remains following an autopsy.
- Storage of skeletal remains in a room with substandard ventilation.
- Improper changes to the investigative database.
- Storage of tissue samples in a broken freezer.
- Illegal disposal of brain formalin.

INVESTIGATIVE AUTHORITY

The King County Ombudsman's Office was created by the voters of King County in the County Home Rule Charter of 1968 and operates as an independent office within the legislative branch of King County government. The Office is authorized to investigate the administrative conduct of King County agencies in response to complaints received from the public, or on its own initiative.² The Office promotes public confidence in King County government by responding to issues in an impartial, efficient and timely manner.

¹ Ms. Struckel was a county employee at the time she submitted this complaint and later resigned from her position at KCMEO.

² King County Code (KCC) section 2.52. In addition, the Ombudsman's Office investigates alleged violations of the King County Employee Code of Ethics (KCC 3.04) and the Lobbyist Disclosure code (KCC 1.07), and reports of improper governmental action under the Whistleblower Protection Code (KCC 3.42).

OMBUDSMAN INVESTIGATION

The initial complaint from Ms. Struckel was received by the Ombudsman's Office on August 23, 2007.

On August 30, 2007, the Ombudsman's Office formally transmitted the whistleblower complaint to the Director of Public Health Seattle and King County (DPH) pursuant to KCC 3.42.050(a).

On November 29, 2007, the Ombudsman's Office received a copy of DPH's response to the complaint.

On December 12, 2007, the Ombudsman's Office received a copy of consultant Karen Sutherland's investigation that was commissioned by DPH following transmittal of the complaint by the Ombudsman's Office. Ms. Sutherland's investigation reviewed all of the allegations described in the complaint.

The Ombudsman's Office conducted a preliminary review of all of the allegations in Ms. Struckel's complaint as well as DPH's response to the complaint. While some of the allegations raised unresolved issues, many of the issues have been resolved by the agency. The Ombudsman's Office accordingly investigated the following allegations:

- Inappropriate semen collection practices.
- Improper disposal of human brain tissue following autopsies.
- Improper treatment of fetal remains following an autopsy.
- Storage of skeletal remains in a room with substandard ventilation.
- Improper changes to the investigative database.
- Storage of tissue samples in a broken freezer.
- Illegal disposal of brain formalin.

Deputy Ombudsman Chuck Sloane led the Ombudsman's Office investigation, with oversight from King County Ombudsman Amy Calderwood and Senior Deputy Ombudsman Jon Stier.

WHISTLEBLOWER PROTECTION CODE

The Whistleblower Protection Code (KCC 3.42.020(c)) is an avenue for King County employees to report improper governmental action and retaliation.

The relevant substantive section of the Whistleblower Code at the time this complaint was filed³; stated:

³ On June 29, 2009, the King County Council revised chapter 3.42 of the county code (Ordinance 16580). This report relies upon and refers to the language in chapter 3.42 of the county code at the time the complaint was received.

“Improper governmental action” means any action by a county officer or employee 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 employment, and:

1. Violates any state or federal law or rule or county ordinance or rule, or
2. Constitutes an abuse of authority, or
3. Creates a substantial and specific danger to the public health or safety, or
4. Results in a gross waste of public funds.⁴

Section 3.42.020(c) also provides that “a properly authorized county program or activity does not become an ‘improper governmental action’ because an employee or investigating official dissents from the county policy or considers the expenditures unwise.”

King County Code section 3.42.050(a) recognizes the role of the Ombudsman as an appropriate investigating official for alleged improper governmental actions occurring within an executive branch agency such as DPH. Procedurally, the Code provides that:

The ombudsman may refer the report to the department director of the agency in which the alleged improper governmental action occurred or to the chief elected official of the branch of government implicated in the allegation, who shall ensure that the appropriate officer or agency responds to the complainant in writing within thirty (30) days of the receipt of the report, with a copy of the response to the ombudsman. If the ombudsman does not refer to another official, or if the other official's response is not timely or satisfactory to the ombudsman, the ombudsman may conduct an investigation.

SUMMARY OF FACTS AND FINDINGS

Allegation 1: *Inappropriate semen collection practices at KCMEO.*

KCMEO occasionally tests for the presence of semen in criminal cases. A control sample of semen is used to ensure the chemical stain the agency uses to prepare the semen for analysis is functioning properly. To obtain the control samples of semen, Dr. Richard Harruff, the Chief Medical Examiner for KCMEO would make a general announcement to KCMEO employees for samples and offer \$20.00 of his own money to anyone who was willing to donate. Dr. Harruff explained in Ms. Sutherland's investigation that this method of obtaining samples was significantly less expensive than ordering them through a medical supply company.

⁴ KCC 3.42.020(c).

The collection of semen samples from employees was voluntary and the process was designed so that samples could be submitted anonymously. KCMEO discontinued this practice of semen collection in November 2007, when it began purchasing semen samples from a medical supply company.

Finding 1: The Ombudsman’s Office understands how the semen procurement practice appeared to be inappropriate and could have been misinterpreted. However, the only portion of the county’s improper governmental action definition that could reasonably relate to this allegation is “abuse of authority.” The Ombudsman’s Office found no evidence that Dr. Harruff pressured employees to participate in this practice, retaliated against employees who declined to participate, or otherwise abused his position. Dr. Harruff’s actions did not constitute an improper governmental action under KCC 3.42.020(c).

Allegation 2: *KCMEO improperly disposed of human brain tissue following autopsies from 2001 to 2007.*

KCMEO conducts a neuropathology conference approximately once a week in which tissue samples are taken from a brain for analysis. During the period cited in this allegation (2001-2007), after a sample was taken the rest of the brain was placed in a biohazard bag and picked up by a contractor⁵ for off-site incineration. This brain disposal method met the criteria for appropriate disposal of biomedical waste described by the Harborview Medical Center where KCMEO was located at the time. Additionally, KCMEO’s practice of retaining some brain tissue for analysis was legal according to Washington State law.⁶

KCMEO changed its brain tissue retention policy in 2005. KCMEO’s current policy directs employees to retain all brain tissue indefinitely and notify the family of the deceased that the agency is saving the brain tissue. If any plan emerges to dispose of brain tissue the current policy directs KCMEO employees to inform the decedent’s family before tissue disposal occurs.

Finding 2: The only portion of the county’s improper governmental action definition that could reasonably relate to this allegation is subsection 1: “violates any state or federal law or rule or county ordinance or rule.” However, the Ombudsman’s Office found no evidence to support the claim that this process violated any existing law, rule or ordinance. Therefore, this action does not constitute an improper governmental action under KCC 3.42.020(c).

⁵ The Stericycle Corporation.

⁶ RCW 68.50.106 states that a medical examiner may “retain or dispose of any specimens or organs of the deceased which in his or her discretion are desirable or needful for anatomic, bacteriological, chemical, or toxicological examination.”

Allegation 3: *KCMEO improperly placed a deceased fetus in its deceased mother's visceral bag⁷ following an autopsy in September 2005.*

Following the autopsy cited in this complaint, KCMEO officials consulted with the decedent's funeral home to determine how to prepare the remains. KCMEO prepared the body in accordance with the funeral home's request and placed the fetus with organs that had been removed from the mother during the autopsy. In October 2005, KCMEO created a new policy to clarify the protocol for handling pregnant decedents and their fetuses. The new policy states:

If the decedent is an adult female carrying a fetus, the fetus is to be wrapped in its own separate baby body bag and labeled with the same case number as that of the mother. This body bag is then taped onto the top of the mother's body bag. The fetus should also be written onto the disposition form before release.⁸

Finding 3: The only portion of the county's improper governmental action definition that could reasonably relate to this allegation is subsection 1: "violates any state or federal law or rule or county ordinance or rule." However, the Ombudsman's Office found no evidence to support the claim that this process violated any existing law, rule or ordinance. Therefore, this action does not constitute an improper governmental action under KCC 3.42.020(c).

Allegation 4: *KCMEO stored human skeletal remains in a room with inadequate ventilation.*

During the time period cited in this complaint, KCMEO leased examination space from the Harborview Medical Center (HMC). KCMEO used one of the rooms at HMC to boil skeletal remains and dry decedents' clothing. The ventilation system in this room was functional but performed at a less than optimal level. KCMEO reported the ventilation issues to HMC, which made multiple attempts to improve the system. The complaint alleged that the smell from the remains was significantly worse when the ventilation system was not working properly. While these ventilation issues were likely uncomfortable for KCMEO employees there is no legal requirement for ventilation in this situation. The more pressing safety issue in this area was staff exposure to blood and other potentially infectious materials. To address this concern, KCMEO employees were instructed to take universal precautions⁹ in this area pursuant to WAC 296-823-110.

⁷ Visceral bags are plastic bags that KCMEO uses to store a decedent's dissected organs following an autopsy.

⁸ KCMEO Policy Manual (page 26).

⁹ "Universal Precautions" are an approach to infection control. According to this concept all human blood and certain human body fluids are treated as if known to be infectious for bloodborne pathogens. WAC 296-823-200.

In May 2009, KCMEO moved into a new building. The room currently devoted to boiling down and laying out skeletal remains and clothing has a more effective ventilation system than that used at HMC.

Finding 4: The only portion of the county's improper governmental action definition that could reasonably relate to this allegation is subsection 1: "violates any state or federal law or rule or county ordinance or rule." However, the Ombudsman's Office found no evidence to support the claim that this process violated any existing law, rule or ordinance. Therefore, this action does not constitute an improper governmental action under KCC 3.42.020(c).

Allegation 5: *KCMEO made two improper changes to the investigative database.*

KCMEO uses VertiQ, a case management system designed for coroners and medical examiners. The VertiQ system records the details of autopsy cases, including: investigative reports, toxicology findings, evidence and property. The VertiQ system uses a drop-down box that requires KCMEO employees to choose the name of the staff person who collected the evidence for each case. The drop-down box included the names of current KCMEO staff and also the names of people who were no longer KCMEO employees.

The complaint alleged that in one case a KCMEO employee misidentified the investigator in a VertiQ file. In reviewing this case, it appears that a KCMEO employee incorrectly selected the last name "Mahmood" from the drop-down box rather than the correct name "Myrabo." The similarity of these names lends credence to KCMEO's assertion in Ms. Sutherland's report that this was a clerical mistake.

The complaint also alleged that in a second case, a KCMEO employee improperly modified autopsy information after the fact. In reviewing this case it appears that the KCMEO employee cited did modify the format of a VertiQ file so that a decedent's possessions could be separated for release and/or disposal. This activity was within the employee's job responsibilities.

Finding 5: These actions do not constitute an improper governmental action under KCC 3.42.020(c).

Allegation 6: *KCMEO stored tissue samples in a broken freezer.*

According to Ms. Sutherland's report, the freezer in question was above 32 degrees Fahrenheit on at least three occasions between January and July in 2007. But the complainant did not provide evidence of, and neither Ms. Sutherland nor the Ombudsman's Office found, any instances in which tissue samples were degraded from thawing. Additionally, there is no evidence to support the claim that this practice compromised an autopsy investigation.

In May 2009, KCMEO moved into a new building with new refrigerators and freezers.

Finding 6: These actions do not constitute an improper governmental action under KCC 3.42.020(c).

Allegation 7: *KCMEO dumped brain formalin down the drain in the autopsy suite at the Harborview Medical Center in violation of state law.*

Formalin is a formaldehyde-based solution¹⁰ that KCMEO uses to preserve human body tissue for autopsy. Basic formalin generally has a formaldehyde concentration of 3.7%. Brain formalin has a higher concentration of formaldehyde (7.4%) than basic formalin. Formaldehyde is a solid waste¹¹ and a dangerous waste¹². The disposal of formaldehyde solutions in King County is regulated by the King County Code, state law, and federal law.

Based on information obtained in the course of our investigation it appears that the following two methods of brain formalin disposal were used at KCMEO between 2001 and 2007:

Method One: This method was described by Gareth Johnson, a manager in DPH in a letter to the Ombudsman's Office. This method involved placing a brain in an eight liter bucket, then floating the brain in brain formalin to preserve it. Once the formalin had preserved the brain the excess formalin was poured off into a container properly designated for dangerous waste disposal. At this point, some excess formalin still remained within the folds of the brain. To remove this formalin, the eight liter bucket holding the brain was filled with water. The water was allowed to run until it overflowed the bucket, displacing the formalin, and the mixture was then allowed to run down the drain.

According to representatives from the Washington State Department of Ecology and the King County Industrial Waste Program¹³, Method One is an acceptable way to dispose of formalin solutions. Employee accounts presented in the Sutherland investigation indicate that the disposal process described as Method One was used by five of the seven KCMEO staff members primarily responsible for brain formalin disposal between 2001 and 2007.

¹⁰ Formalin is a mixture of formaldehyde, monobasic chemical, dibasic chemical and water.

¹¹ WAC 173-303-016.

¹² WAC 173-303-100.

¹³ The King County Industrial Waste Program regulates and provides guidance on waste water discharge in King County.

Method Two: This method was described by Ms. Struckel in the Sutherland investigation. It involved placing a brain in an eight liter bucket and then floating the brain in brain formalin to preserve it. To dispose of the formalin, water was added directly to the eight liter bucket holding the brain and all of the formalin. The water was allowed to run until it overflowed the bucket, displacing the formalin, and the mixture was allowed to run down the drain.

The reliance upon dilution described in Method Two is an unacceptable method of disposal according to the King County Code, Washington state law, and King County Industrial Waste Directory guidelines.

The King County Code section relevant to this matter is KCC 28.84.060(d)(3), which states:

No industrial user shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with an applicable pretreatment standard or requirement unless expressly authorized by an applicable pretreatment standard or requirement. The director may impose mass limitations or flow restrictions on users he or she believes may be using dilution to meet applicable pretreatment standards or requirements.

In addition, WAC 173-303 defines acceptable methods of treatment and disposal of dangerous wastes like brain formalin and states in relevant part:

A person may offer a designated dangerous waste only to a TSD facility.

WAC 173-303-141(1).

Any action taken to evade the intent of this regulation by dividing or diluting wastes to change their designation shall be prohibited, except for the purposes of treating, neutralizing, or detoxifying such wastes.

WAC 173-303-150(1).

In addition to the county code and state law, the King County Industrial Waste Program (KCIWP) is "designed to prevent businesses from discharging substances that can degrade the wastewater treatment process, harm workers or facilities, or impact surface water quality."¹⁴

¹⁴ King County Industrial Waste Program fact sheet, accessed online at <http://www.kingcounty.gov/environment/wastewater/IndustrialWaste.aspx>.

