



Office of Human Resources

John A. Kitzhaber, MD, Governor

Oregon
Health
Authority

Date: June 18, 2013

To: Suzanne Hoffman
Chief Operating Officer

From: Angela Young
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Subject: Review and Analysis

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Scope of Review:

Did state employees influence data specific to the "2012 Oregon Smiles and Healthy Growth Survey" or willfully delay the distribution of the report?

Did state employees violate state and/or agency policy in communications related to political activity?

Did state employees violate other state and/or agency policies or engage in inappropriate activities not specific to the business of the Oregon Health Authority?

Review of First Issue:

Regarding the first issue listed above, our review consisted of the following action steps by our office:

- 1) Extensive review of Agency documents, including hundreds of emails. The emails spanned the time period from July 1, 2012 through April 30, 2013.
- 2) Interviews with both Mel Kohn, Director of Public Health and Shanie Mason, Manager Oral Health Program.

Conclusion:

- 1) The data collection for the survey began in the spring of 2012 and went through October 2012.
- 2) The data collection took place prior to the ballot measure.
- 3) The data collected was sent to the contractor on November 29, 2013 to scan into the database. The previous survey in 2007 took approximately seven months from the time the data went to the contractor and the final report was distributed.
- 4) The letter dated May 2, 2013, from Dr. Mel Kohn to Kim Kaminski, addressed the concern or perception that the Department had willfully delayed the distribution of the 2012 Oregon Smiles and Health Growth Report. The letter clearly states that the report was not delayed by OHA staff. The information in Dr. Kohn's letter was reiterated to me during the interview. Specifically "The release of our analyses of the survey data was not delayed. In 2007 it took approximately seven months between when data collection was completed and our report was issued. This year, data were sent to our contractor for scanning into a database on November 29, 2012, so if our timeframe was similar we would expect the release of our report in June 2013." The letter goes on to state "The report was/will be released when the analyses were complete and the interpretation was/has been appropriately reviewed to ensure accuracy. The timeline for analyses associated with this report is consistent with what happens with all of our reports. It is always difficult to predict how long it will take to analyze data since data analysis is often an iterative process; new analyses are often suggested by findings from

earlier analyses. Once the data have been analyzed it also takes time to craft what we feel is an accurate description of what the analyses mean, and so several cycles of review by multiple people are typical. Accuracy is the primary goal."

- 5) It is not uncommon for state government officials to meet with special interest groups; therefore it is not extraordinary that Public Health leadership met with Upstream Public Health. In my interviews with both Dr. Kohn and Ms. Mason they indicated Upstream Public Health was the only special interest group that had requested to meet with them regarding the survey.
- 6) The email from Shanie Mason states "I'm (also) getting a ton of pressure from advocates like Upstream Public Health that have very specific ideas about how we should present our information. Unfortunately for them, I'm committed to maintaining the integrity of our work." This email and the interview with Ms. Mason supports that she was committed to ensure unbiased and accurate data in the final report.

Based on our extensive review of the documents and interviews with both Dr. Kohn and Ms. Mason we conclude there were not any willful delays in the distribution of the report or influencing of the data. We also did not find any impropriety on behalf of the employees or the program.

Review of Second Issue:

Regarding the second issue listed above, our review consisted of the following action steps by our office:

- 1) Review and analysis of emails
 - 2) Interview with employee, Laurie Johnson
 - 3) Review of the following:
 - a) Acceptable Use of Information-related Technology Policy, DHS-070-004
 - b) Solicitation of public employees; activities of public employees during working hours ORS 260-432(2)
 - c) The Hatch Act
 - 4) Consultation with Department of Justice (DOJ)
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- 1) The review of the email communication determined the email exchange on April 15, 2013 regarding pro-fluoridation yard signs was the only issue that needed additional information.
 - 2) An interview was held with employee on June 4, 2013 where the employee was very cooperative and provided the following information:
 - a) She emphasized that her manager, Shanie Mason, provided specific expectations about keeping clear boundaries between the work being done within Public Health and the campaigning efforts.
 - b) Her manager reminded staff frequently about the separation and boundaries.
 - c) She indicated that she was contacted by one of her contracted hygienists for the School Dental Sealant Program, per the email dated April 15, 2013. She indicated that wasn't uncommon to be contacted by a hygienist; however, it was typically for supplies for the program.
 - d) She stated that she did not provide the signs to the person that day as she was never contacted again, and after she made the statement she remembered her car was parked about a ½ a mile away on that day.
 - e) She informed me that she began thinking this may be crossing boundaries and took action the next day. She sent a text to this person on her personal cell phone, which she provided me a copy, stating "I am unable to do fluoridation stuff from work. Hence this text. I don't have the signs close by today. I can drop them off on your porch this weekend."

- 3) We reviewed the policy, statutory language and the Hatch Act and gathered the following information that may apply to the issue:
 - a) Acceptable Use of Information-related Technology Policy, states "(5) (a) Personal use of DHS technology is permitted on a limited basis for incidental purposes" and "(5) (d) Any personal use: (A) Must confirm to other sections of this policy." "(R) Must not be for political purposes."
 - b) ORS 260-432(2) states "No public employee shall solicit any money, influence, service or other thing of value or otherwise promote or oppose any political committee or promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder while on the job during working hours." However, this section does not restrict the right of a public employee to express personal political views.
 - c) The Hatch Act states "State and local employees subject to the provisions of the Hatch Act may not: (1) use their official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office; (2) directly or indirectly coerce, attempt to coerce, command or advise a state or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes; or (3) be candidates for elective office.

Conclusion:

Based on the Agency's review and consultation with DOJ, we have determined the email exchange was a minor violation of the Acceptable Use Policy. There was no violation to ORS 260-432 or the Hatch Act. I would also add the following information gathered during our review:

- 1) The employee stated her supervisor provided her clear expectations related to political activity while in the workplace.
- 2) The employee did not initiate the communication.
- 3) The email exchange was limited and incidental.
- 4) The employee, without any counseling from her supervisor or the Agency, took the appropriate steps to redirect any future communication regarding this issue.
- 5) The employee did not deliver any signs at work, and the text supports her indication she could distribute "on the weekend."
- 6) The text was on her personal phone, not a work cell phone.

The Agency believes that confirming the expectations to the employee is appropriate, reaffirming what she already acknowledged in our meeting. The Agency is also committed to creating and implementing a communication strategy to ensure education for all employees, including prohibited activities when policy activity is occurring.