

Case 11: Developing and Maintaining Communication Channels

I. FACTS

Case 2 considered the potential problems posed by the powerful board chairman. In that case, the chairman was Archie Brooks and the agency was the Central Iowa Employment and Training Consortium (CIETC). Take a few minutes to review that case if you don't recall the core facts.

A. WHISTLEBLOWERS

CIETC's board might have been able to rectify CIETC's problems had it heard from the whistleblowers who attempted to alert various officials, including regulators and elected officials. Virtually all those who received alerts were slow to respond.

B. INITIAL REPORTS

In April 2006, an anonymous former CIETC employee talked with the media about what she had seen while working in CIETC's payroll department.¹ Recall that the scandal centered on excessive compensation, so this employee had a bird's-eye view. She requested anonymity out of fear over retaliation.

The former employee told KCCI 8 News that the misuse of public funds had been going on for years. She noticed several checks for \$3,000 made out to top executives, causing her to copy them and report the matter to the FBI.

C. INVESTIGATORY REPORT

One of the more prominent whistleblowers was Kelly Taylor, a budget analyst with Iowa Workforce Development (IWD), a state agency that disbursed grant money to CIETC.² There are allegations that Jane Barto, IWD's deputy director, and Ramona Cunningham, CIETC's CEO, had a close personal relationship.³

During the course of an investigatory interview by state investigators,⁴ Taylor identified the following five concerns: (1) the salaries and bonuses for CIETC executives; (2) the changes by an IWD employee to the way the budget analysts address issues in monitoring reports; (3) hiring procedures at IWD; (4) the treatment of Taylor by IWD management; and (5) employees on CIETC's payroll who performed work for IWD, not CIETC.⁵

¹ *Former CIETC Works Says Payroll Abuses Happened for Years: Worker Says Those at Top Knew of Misspent Funds*, KCCI 8 NEWS, Apr. 8, 2004.

² WHOtv.com, *Brooks Reacts to CIETC Memo*, May 22, 2006; *CIETC Scandal: The Week in Review*, DES MOINES REGISTER, Apr. 7, 2006; and Jonathan Roos, Jason Clayworth, and Clark Kauffman, *Audit Fallout Builds Pressure on Workforce Officials*, Des Moines Register, Apr. 5, 2006.

³ *CIETC Scandal: The Week in Review*, DES MOINES REGISTER, Apr. 7, 2006; and Clark Kauffman and Jonathan Roos, *Top Officials Quit Over State Job-Training Pay Controversy*, DES MOINES REGISTER, Apr. 6, 2006.

⁴ Summaries of a number of interviews by state investigators are available the *Des Moines Register's* Web site. Regrettably the summaries do not indicate who conducted the interviews. The *Register* identifies the summaries as government investigatory documents, but is less than clear in identifying the specific government unit that conducted the investigation.

⁵ Investigation Report Summary—Iowa Workforce Development—Summary of Interview with Kelly Thomas (Apr.

The State of Iowa conducted an extensive investigation into the scandal. Summaries of the interviews paint a detailed, but confusing picture of the contacts between the various participants.⁶ Some of the interviews suggest or allege that there were attempts to thwart efforts to surface alleged wrongdoing. The Des Moines Register, in detailing the scandal, reported,

“Jane Barto called our office in the region and requested that (Workforce Development) be allowed to investigate the matter,” said Mason Bishop, the U.S. Department of Labor’s deputy assistant secretary for employment and training. “And she assured our staff there was no indication of criminal behavior.”

Barto denied any attempt to discourage an investigation into CIETC.

But the alleged call to federal officials indicates that Barto was attempting to overrule her agency’s financial experts as they called for a federal investigation.⁷

The Register then details contacts by Kelly Taylor, the whistleblower working as an IWD budget analyst, with the Chicago office of the Department of Labor, reports by Taylor to his superior, allegations that Barto removed Taylor from the investigation, and allegations that IWD officials then tried to head off a federal investigation.

One whistleblower sent letters detailing CIETC’s problems to Iowa’s governor, a U.S. Senator and a member of the U.S. House of Representatives.⁸ The whistleblower also indicated she mailed letters to several CIETC board members. There is some indication in the Register’s reporting that the anonymous nature of the letters may have resulted in the letters receiving less attention than they might otherwise have received. According to the Register, the whistleblower who sent the anonymous letters was placed on administrative leave about two months after sending the letters.

II. DISCUSSION QUESTIONS

The following questions are offered for discussion:

- A. Although there is some indication that at least one whistleblower sent letters to certain members of CIETC’s board, the whistleblowers appear to have focused their efforts on contacting people outside of CIETC. Why might that be the case?
- B. If you were a high level official in an organization, would you be more inclined to respond to an anonymous letter than one from an identified individual?
- C. What steps might CIETC’s board have taken to encourage whistleblowers to report alleged wrongdoing to CIETC’s board rather than to outsiders?

7, 2006).

6 See note 5, *supra*.

7 Clark Kauffman and Jonathan Roos, *Top Officials Quit Over State Job-Training Pay Controversy*, DES MOINES REGISTER, Apr. 6, 2006.

8 Jason Clayworth, *Ex-Worker Tells of '04 CIETC Alert*, DES MOINES REGISTER, Apr. 20, 2006.

D. What can a board do to prevent an executive director from hiding problems or wrongdoing from the board?

III. ONE SUGGESTED SOLUTION

A. THE DILEMMA

The board must rely on people within the organization to provide it with information about problems facing the CAA, but if senior management is the cause of those problems, lower-level employees will be reluctant to bring the problems to the attention of supervisors. To assure that the board receives vital information, the board must develop clear lines of communication with all employees so that employees know where to report their concerns. It also must make sure employees are comfortable in doing so.

B. REASONS FOR SILENCE

Lower level employees may decide to remain silent for a variety of reasons. First, and foremost, many fear retaliation. Second, an employee may not make a report because he is unsure whom to contact. Third, employees may have detected that the board is dysfunctional, leading to the conclusion that there will no response so why take the risk? Fourth, employees who are particularly disturbed by the circumstances may decide that the most expedient action is to seek employment elsewhere.

C. THE APPROACH TAKEN BY CIETC'S WHISTLEBLOWERS WAS TELLING

CIETC's whistleblowers decided to report their concerns, but mostly to those outside of CIETC. This strongly suggests that CIETC's board was ineffective and nonresponsive. Brooks' comments to the media support that view. It also appears from the media accounts and interviews that the whistleblowers believed CIETC's senior management would not respond. That should come as no surprise given the fact that senior managers were the recipients of the compensation that caused the concerns.

D. ANONYMITY

Open-minded managers and boards are more likely to respond to complaints by persons who are willing to identify themselves. This is only natural. A number of CIETC's whistleblowers reported anonymously to outsiders. Not surprisingly, those outsiders were less responsive than they might otherwise have been had the whistleblowers identified themselves. People want the context that comes with knowing who is raising the complaint before taking action.

Although anonymity is less preferable from the board's standpoint, it may be necessary if the board wants information. Even when anonymity is assured, some employees may be highly suspicious of those assurances. Whatever the assurances, the CAA should be careful to point out that it cannot guarantee anonymity if formal legal proceedings result from the complaint. Although the CAA may intend to keep someone's identity confidential and certainly should do so if it has made assurances, the CAA may be required by law enforcement officials, judicial proceedings, or even funders, to make disclosures.

E. ORGANIZATIONAL CULTURE

Obviously adopting and then publicizing a whistleblower policy is a step toward establishing an open-door policy. In truth, however, a piece of paper is not going to result in reports if the employees perceive senior management as Gestapo-like in their tactics. Long before the board adopts a formal whistleblower policy, it has established a de facto one as result of who it hires and

the control it exerts over employment practices and policies. If the board has shown that it is responsive to employees, it is much more likely to receive vital information from employees who are concerned about the organization, particularly if there are clear channels for communicating the information. The board shows that concern not in just how it responds to a whistleblower, but how it responds to employee questions and proposals in general.

F. MULTIPLE CHANNELS

CAAs should consider instituting multiple reporting channels for whistleblowers. For example, concerns over financial fraud and mismanagement might be directed to the board's audit committee, while concerns over employment practices might be directed to someone in the HR department or the board's compensation or personnel committee. Each CAA will have to consider its unique circumstances to determine what channels will work best for it.

G. THIRD PARTY REPORTING HOTLINES

A number of private companies have recognized the need for independent third party reporting. Some do offer services directed at nonprofits, but most focus on larger companies that have need for independent reporting because of the federal Sarbanes-Oxley Act (Section 301 requires anonymous reporting procedures, but this requirement only applies to publicly-traded companies subject to the Act) and concerns over the Federal Sentencing Guidelines.⁹

H. SOLVING PROBLEMS BEFORE THEY BECOME EXPENSIVE

Whistleblowers who become frustrated may decide to raise their concerns outside of the organization, as was true in the case of one CIETC whistleblower. This can prove embarrassing if the whistleblower seeks the media's help, or expensive if the whistleblower contacts a lawyer. Section 3729 of Title 31 to the United States Code imposes liability on persons and organizations who knowingly present to the United States false or fraudulent claims for payment or approval. Section 3730 then goes on to provide for a private right of action by qui tams (private individuals that include a nonprofit's employees), which permits these individuals to participate in the recovery received by the government. A nonprofit may assume its employees are unlikely to file a suit. That may be true, but a Google search of "Federal False Claims Act" or qui tam returns results that point to a very active plaintiff's bar. Many states have adopted analogues to the Federal False Claims Act. A CAA that provides its employees with a clear avenue to bring wrongdoing to the attention of the board may be able to avoid expensive outside involvement by an aggressive lawyer.

IV. BACKGROUND MATERIAL

For additional commentary, review Section IV (Whistleblowers).

⁹ Chapter 8 of the Federal Sentencing Guidelines (2004)