

**§112.3189 FS | INVESTIGATIVE PROCEDURES UPON RECEIPT OF WHISTLE-BLOWER INFORMATION FROM CERTAIN STATE EMPLOYEES**

(1) This section only applies to the disclosure of information as described in s. 112.3187(5) by an employee or former employee of, or an applicant for employment with, a state agency, as the term "state agency" is defined in s. 216.011, to the Office of the Chief Inspector General of the Executive Office of the Governor or to the agency inspector general. If an agency does not have an inspector general, the head of the state agency, as defined in s. 216.011, shall designate an employee to receive information described in s. 112.3187(5). For purposes of this section and s. 112.3188 only, the employee designated by the head of the state agency shall be deemed an agency inspector general.

(2) To facilitate the receipt of information described in subsection (1), the Chief Inspector General shall maintain an in-state toll-free whistle-blower's hotline and shall circulate among the various state agencies an advisory for all employees which indicates the existence of the toll-free number and its purpose and provides an address to which written whistle-blower information may be forwarded.

(3) When a person alleges information described in s. 112.3187(5), the Chief Inspector General or agency inspector general actually receiving such information shall within 20 days of receiving such information determine:

(a) Whether the information disclosed is the type of information described in s. 112.3187(5).

(b) 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, as defined in s. 216.011.

(c) 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.

(4) If the Chief Inspector General or agency inspector general under subsection (3) determines that the information disclosed is not the type of information described in s. 112.3187(5), or that the source of the information is not a person who is an employee or former employee of, or an applicant for employment with, a state agency, as defined in s. 216.011, or that the information disclosed does not demonstrate 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, the Chief Inspector General or agency inspector general shall notify the complainant of such fact and copy and return, upon request of the complainant, any documents and other materials that were provided by the complainant.

(5)

(a) If the Chief Inspector General or agency inspector general under subsection (3) determines that the information disclosed is the type of information described in s. 112.3187(5), that the source of the information is from a person who is an employee or former employee of, or an applicant for employment with, a state agency, as defined in s. 216.011, and that the information 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 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, the Chief Inspector General or agency inspector general making such determination shall then conduct an investigation, unless the Chief Inspector General or the agency inspector general determines, within 30 days after receiving the allegations from the complainant, that such investigation is unnecessary. For purposes of this subsection, the Chief Inspector General or the agency inspector general shall consider the following factors, but is not limited to only the following factors, when deciding whether the investigation is not necessary:

1. The gravity of the disclosed information compared to the time and expense of an investigation.
2. The potential for an investigation to yield recommendations that will make state government more efficient and effective.
3. The benefit to state government to have a final report on the disclosed information.
4. Whether the alleged whistle-blower information primarily concerns personnel practices that may be investigated under chapter 110.
5. Whether another agency may be conducting an investigation and whether any investigation under this section could be duplicative.
6. The time that has elapsed between the alleged event and the disclosure of the information.

(b) If the Chief Inspector General or agency inspector general determines under paragraph (a) that an investigation is not necessary, the Chief Inspector General or agency inspector general making such determination shall:

1. Copy and return, upon request of the complainant, any documents and other materials provided by the individual who made the disclosure.
2. Inform in writing the head of the state agency for the agency inspector general making the determination 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.

(6) The agency inspector general may conduct an investigation pursuant to paragraph (5)(a) only if the person transmitting information to the agency inspector general is an employee or former employee of, or an applicant for employment with, the agency inspector general's agency. The agency inspector general shall:

(a) Conduct an investigation with respect to the information and any related matters.

(b) Submit to the complainant and the Chief Inspector General, within 60 days after the date on which a determination to conduct an investigation is made under paragraph (5)(a), a final written report that sets forth the agency inspector general's findings, conclusions, and recommendations, except as provided under subsection (11). The complainant shall be advised in writing by the agency head that the complainant may submit to the Chief Inspector General and agency inspector general 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.

(7) If the Chief Inspector General decides an investigation should be conducted pursuant to paragraph (5)(a), the Chief Inspector General shall either:

(a) Promptly transmit to the appropriate head of the state agency the information with respect to which the determination to conduct an investigation was made, and such agency head shall conduct an investigation and submit to the Chief Inspector General a final written report that sets forth the agency head's findings, conclusions, and recommendations; or

(b)

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

2. Submit to the complainant within 60 days after the date on which a determination to conduct an investigation is made under paragraph (5)(a), a final written report that sets forth the Chief Inspector General's findings, conclusions, and recommendations, except as provided under subsection (11). The complainant shall be advised in writing by the Chief Inspector General that the complainant may submit to the Chief Inspector General 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.

(c) The Chief Inspector General may require an agency head to conduct an investigation under paragraph (a) only if the information was transmitted to the Chief Inspector General by:

1. An employee or former employee of, or an applicant for employment with, the agency that the information concerns; or
2. An employee who obtained the information in connection with the performance of the employee's duties and responsibilities.

(8) Final reports required under this section must be reviewed and signed by the person responsible for conducting the investigation (agency inspector general, agency head, or Chief Inspector General) and must include:

- (a) A summary of the information with respect to which the investigation was initiated.
- (b) A description of the conduct of the investigation.
- (c) A summary of any evidence obtained from the investigation.
- (d) A listing of any violation or apparent violation of any law, rule, or regulation.
- (e) A description of any action taken or planned as a result of the investigation, such as:
  1. A change in an agency rule, regulation, or practice.
  2. The restoration of an aggrieved employee.
  3. A disciplinary action against an employee.
  4. The referral to the Department of Law Enforcement of any evidence of a criminal violation.

(9)

(a) A report required of the agency head under paragraph (7) (a) shall be submitted to the Chief Inspector General and the complainant within 60 days after the agency head receives the complaint from the Chief Inspector General, except as provided under subsection (11). The

complainant shall be advised in writing by the agency head that the complainant may submit to the Chief Inspector General comments on the report within 20 days of the date of the report and that such comments will be attached to the final report.

(b) Upon receiving a final report required under this section, the Chief Inspector General shall review the report and determine whether the report contains the information required by subsection (8). If the report does not contain the information required by subsection (8), the Chief Inspector General shall determine why and note the reasons on an addendum to the final report.

(c) The Chief Inspector General shall transmit any final report under this section, any comments provided by the complainant, and any appropriate comments or recommendations by the Chief Inspector General to the Governor, the Legislative Auditing Committee, the investigating agency, and the Chief Financial Officer.

(d) If the Chief Inspector General does not receive the report of the agency head within the time prescribed in paragraph (a), the Chief Inspector General may conduct the investigation in accordance with paragraph (7) (b) or request that another agency inspector general conduct the investigation in accordance with subsection (6) and shall report the complaint to the Governor, to the Joint Legislative Auditing Committee, and to the investigating agency, together with a statement noting the failure of the agency head to file the required report.

(10) For any time period set forth in subsections (3), (6), (7), and (9), such time period may be extended in writing by the Chief Inspector General for good cause shown.

(11) If an investigation under this section produces evidence of a criminal violation, the report shall not be transmitted to the complainant, and the agency head or agency inspector general shall notify the Chief Inspector General and the Department of Law Enforcement.

*History.— s. 13, ch. 92-316; s. 3, ch. 93-57; s. 129, ch. 2003-261; s. 17, ch. 2011-34.*