



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

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November 9, 2020

To: Members of the Ethics Commission

From: Jeff Pierce, Director of Enforcement

Subject: **AGENDA ITEM 5: Whistleblower Program Annual Report**

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**Summary:** This item provides an opportunity for the Commission to hear a presentation by the Controller's Office regarding the annual report the Whistleblower Program published for Fiscal Year 2019-2020.

**Action Requested:** This informational item has been placed on the November 13 meeting agenda for the Commission's discussion. No action is required.

On September 8, 2020, the Controller's Office issued its [Whistleblower Program Annual Report and Quarter 4 Results](#), detailing information from Fiscal Year 2019-2020 about the number of reports (i.e. complaints) it received and investigated or referred and highlighting investigative outcomes and corrective or preventive action that departments may have taken during Quarter 4.

The Whistleblower Program is a division of the City Services Auditor function of the Controller's Office. Created in November 2003 by voter-approved Charter amendment, [Charter Appendix F](#) provides the Controller's Office authority to audit and investigate City departments and City employees. Among other responsibilities, Appendix F charges the Controller's Office with administering a whistleblower hotline and website to receive individual complaints concerning the quality and delivery of government services, wasteful and inefficient City government practices, misuse of City government funds, and improper activities by City government officers and employees.

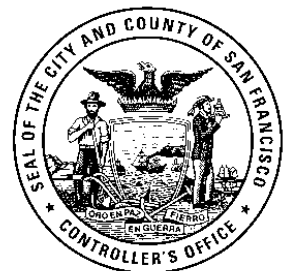
[Article IV](#) of the Campaign & Governmental Conduct Code further outlines the duties of the Whistleblower Program, including by providing that the Whistleblower Program might coordinate matters for which the Controller, City Attorney, District Attorney, and Ethics Commission share jurisdiction. Article IV also authorizes the Controller to refer complaints to City departments for internal investigation, and to refer recommendations to City departments that those departments impose remedial action to resolve case outcomes.

Staff from the Commission's Enforcement Division work closely with Whistleblower Program staff to coordinate the investigation of matters of overlapping jurisdiction and to evaluate whether there is a basis for the Ethics Commission to pursue remedial action in response to any investigative outcomes.

By request of the Commission, Whistleblower Program Supervising Investigator Dave Jensen will present the Annual Report at the Commission's November 13 meeting under Agenda Item 5. He will be joined by the Controller's Office Acting Director of Audits Mark de la Rosa and Whistleblower Program Senior Investigator Steven Muñoz. Both the Annual Report and the Whistleblower Program's presentation slides are attached to this item.

# Whistleblower Program Annual Report and Quarter 4 Results

July 1, 2019, Through June 30, 2020



**September 8, 2020**  
City & County of San Francisco  
Office of the Controller  
City Services Auditor

## About the Audits Division

The City Services Auditor (CSA) was created in the Office of the Controller through an amendment to the San Francisco Charter that was approved by voters in November 2003. Within CSA, the Audits Division ensures the City's financial integrity and promotes efficient, effective, and accountable government by:

- Conducting performance audits of city departments, contractors, and functions to assess efficiency and effectiveness of service delivery and business processes.
- Investigating reports received through its whistleblower hotline of fraud, waste, and abuse of city resources.
- Providing actionable recommendations to city leaders to promote and enhance accountability and improve the overall performance and efficiency of city government.

### Whistleblower Program Team:

Dave Jensen, *Supervising Investigator*  
Eryl Karr, *Senior Investigator*  
Steven Muñoz, *Senior Investigator*  
Matthew Thomas, *Acting Senior Investigator*  
Tiffany Wong, *Senior Investigator*  
William Zhou, *Acting Senior Investigator*

For more information please contact:

Mark de la Rosa  
Acting Director of Audits  
Office of the Controller  
City and County of San Francisco  
(415) 554-7574



<http://sfcontroller.org/whistleblower-program>



<http://www.sfcontroller.org>



@sfcontroller



<https://www.linkedin.com/company/sfaudits/>

## Whistleblower Program Authority

CSA conducts investigations under the authority of the San Francisco Charter, Appendix F, which requires that CSA receive individual complaints concerning the quality and delivery of government services, wasteful and inefficient city government practices, the misuse of city government funds, and improper activities by city government officers and employees.

# Executive Summary

## INVESTIGATION HIGHLIGHTS

The Whistleblower Program received 99 new reports in Quarter 4, bringing the fiscal year 2019-20 total to 599 reports received.

- The 99 reports received in Quarter 4 is the lowest quarterly total in this fiscal year and is 34 percent less than the number of reports received in the same quarter last fiscal year.
- The Whistleblower Program has received more reports each year since fiscal year 2012-13.

The Whistleblower Program closed 585 reports in fiscal year 2019-20 and did so in an average of 64 days.

- The program closed 464 (79 percent) of the 585 reports within 90 days of receipt.
- Of the 585 reports closed, more than half (318, or 54 percent) reached closure after an investigation.
- Of the 318 investigations closed, 106 (33 percent) resulted in a department taking a corrective or preventive action.
- The Whistleblower Program substantiated a diverse and complex set of allegations, including those concerning an employee inappropriately installing a camera in the workplace, unreported secondary employment, misuse of work resources for personal purposes, falsification of time and attendance records, and management ignoring complaints about falsification of time and attendance records.

To continue to manage the sustained, high number of reports received, the program has a multidisciplinary Controller's Office team, along with a coordinated referral and follow-up process with the City Attorney, District Attorney, Ethics Commission, and others with jurisdictional oversight, that collectively possesses the experience and expertise to address the diverse range of allegations received.

## PUBLIC INTEGRITY TIP LINE

In response to the federal criminal charges filed against former Public Works Director Mohammed Nuru, which were made public on January 28, 2020, the Controller's Office and City Attorney's Office began a joint public corruption investigation and opened a Public Integrity Tip Line (Tip Line) on February 4<sup>th</sup> to gather information specific to the investigation. The Tip Line received seven tips from April 1<sup>st</sup> through June 30<sup>th</sup>. Also, the Controller's Office, in cooperation with the City Attorney's Office, instituted additional controls and reviews of Public Works contracts, purchase orders, and grants for red flags and process failures. On June 29<sup>th</sup> the Controller's Office issued "[Public Integrity Review: Preliminary Assessment of San Francisco Public Works Contracting](#)."

## FISCAL YEAR 2019-20 OUTREACH AND EDUCATION HIGHLIGHTS

The Whistleblower Program revised its outreach and education materials to reflect expanded whistleblower protections for city employees and city contractors. The program is collaborating with the Department of Human Resources and Ethics Commission in an effort to publicize the expanded protections and distribute the materials, which has been delayed due to the COVID-19 emergency.

During fiscal year 2019-20 the Whistleblower Program hosted two webinars to promote leading fraud hotline operational practices and effective investigation techniques to jurisdictions throughout the United States. The first webinar, presented in November 2019, was "[Guarding Credibility: Maintaining Objectivity in Government Oversight Agencies](#)." The second webinar, presented in June 2020, was "[Using Root Cause Analysis to Enhance Your Anti-Fraud and Ethics Process](#)."

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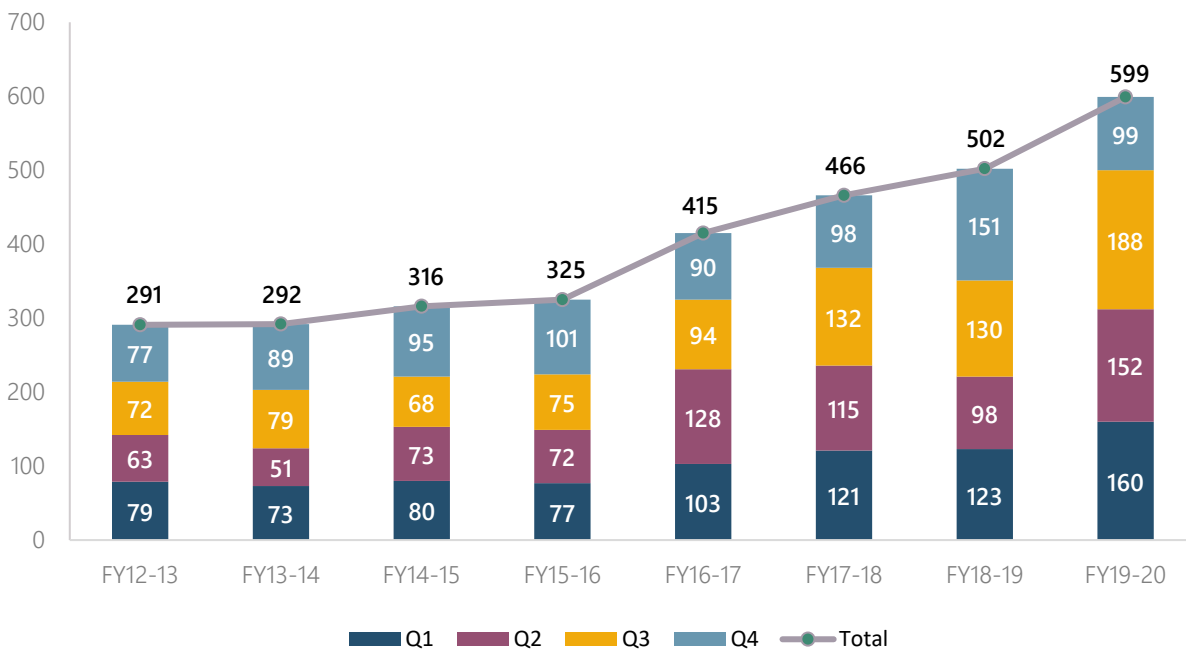
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# Fiscal Year 2019-20 – Key Statistics

## REPORT VOLUME

The Whistleblower Program received 599 new reports in fiscal year 2019-20, a 19 percent increase from the previous fiscal year. Exhibit 1 summarizes the program's receipt of new reports, by quarter, since fiscal year 2012-13.

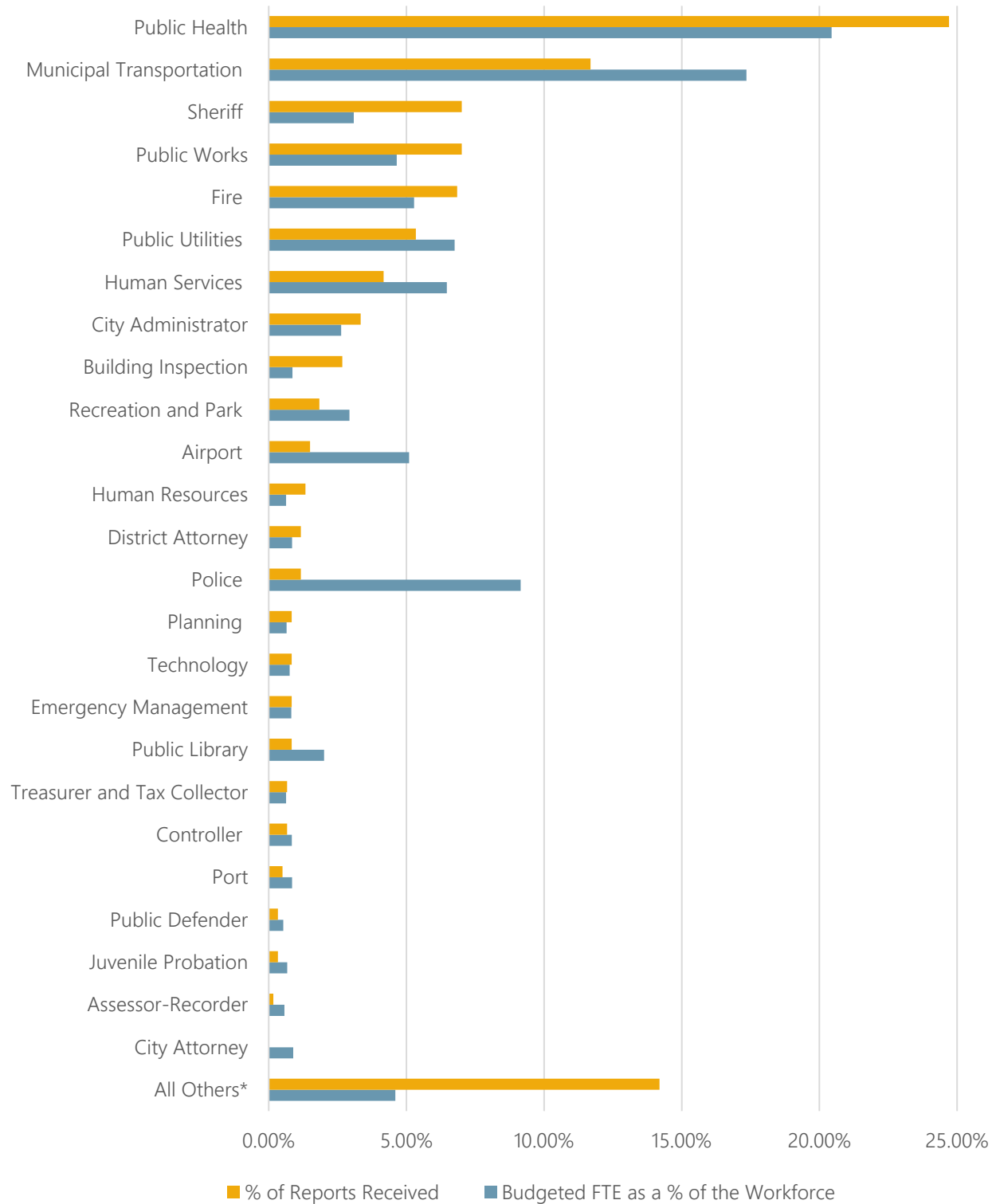
**Exhibit 1: Reports Received by Quarter**



The Whistleblower Program has received more reports each year since fiscal year 2012-13. The rising number of reports received in recent years cannot be attributed to just one factor. To continue to manage the sustained, high number of reports received, the program has a multidisciplinary Controller's Office team, along with a coordinated referral and follow-up process with the City Attorney, District Attorney, Ethics Commission, and others with jurisdictional oversight, that collectively possesses the experience and expertise to address the diverse range of allegations received.



## Exhibit 2: Reports Received in Fiscal Year 2019-20, by Department



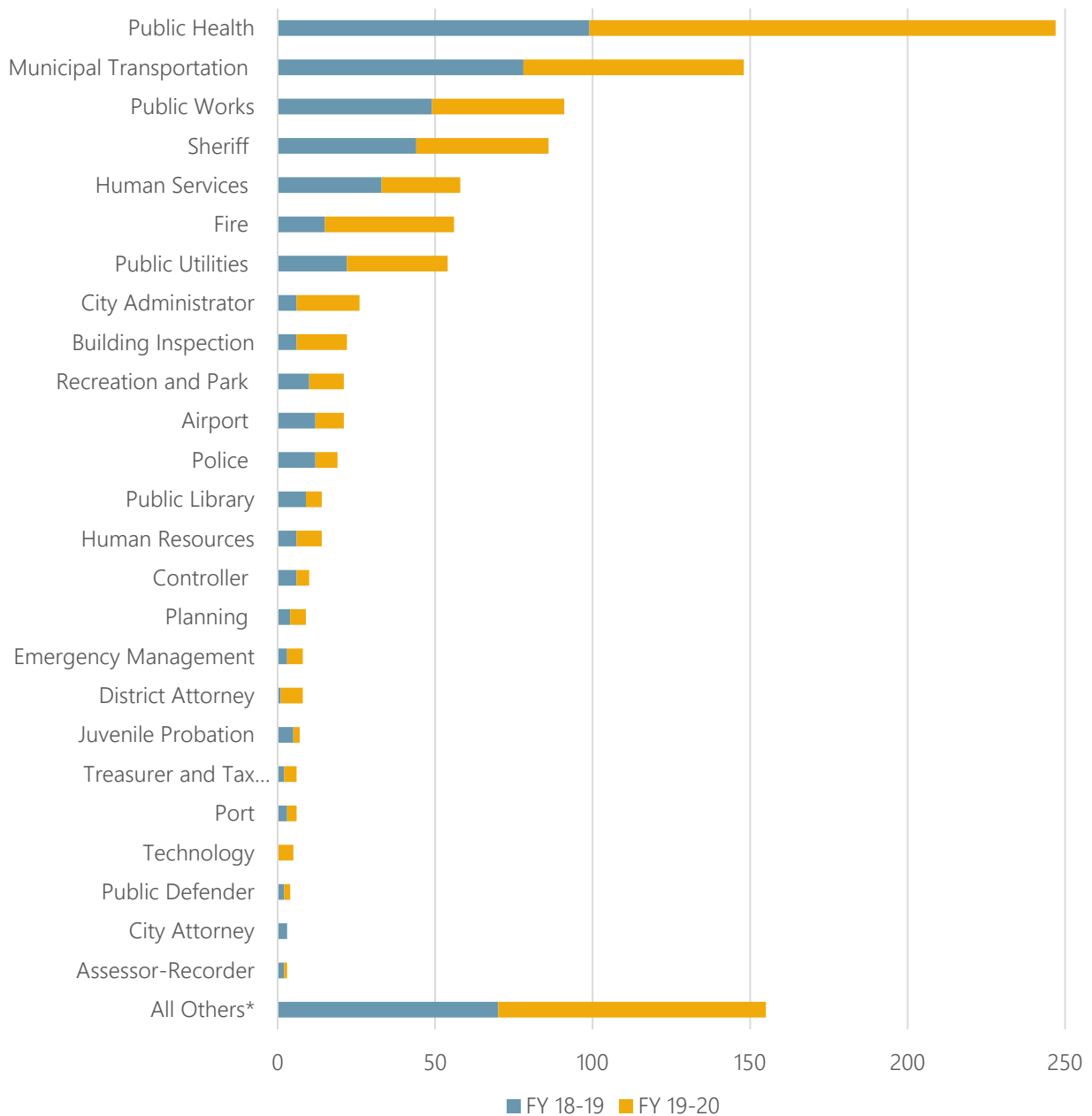
\* Includes reports received about departments with fewer than 200 authorized FTE positions. The names of these departments are excluded from this table to protect the confidentiality of those who reported.<sup>1</sup>

<sup>1</sup> The City had 37,907 authorized FTE positions in fiscal year 2019-20 (City and County of San Francisco, Salary Ordinance for Fiscal Year Ending June 30, 2020, and Fiscal Year Ending June 30, 2021).

**The Whistleblower Program reviews the number of reports received by each department and takes note of departments that receive a higher percentage of reports compared to their share of the workforce.** Indicators such as this may cause the Whistleblower Program to consider further review and engage with the department through additional outreach and education.

Further, the Whistleblower Program also considers multiyear complaint trends in its outreach and education strategy to departments. For example, Exhibit 3 shows the total number of complaints received by departments over the last two fiscal years.

**Exhibit 3: Reports Received in Fiscal Year 2018-19 and 2019-20, by Department\***







\*Includes reports received about departments with fewer than 200 authorized FTE positions. The names of these departments are excluded from this table to protect the confidentiality of those who reported.

## REPORT INTAKE CHANNEL

**Of the 599 reports filed in fiscal year 2019-20, over three-quarters (492, or 82 percent) came through the Whistleblower Program’s website.** The Whistleblower Program is available to anyone, including employees of the City and County of San Francisco (City). Multiple intake channels ensure the program is readily accessible to potential reporters and available to them in a manner with which they are comfortable. **The majority (400, or 67 percent) of reporters filed their reports anonymously.**

Exhibit 4 summarizes reporters’ use of various channels to file reports with the Whistleblower Program.

**Exhibit 4: 492 of the 599 Reports Received in Fiscal Year 2019-20 Came Through the Website**

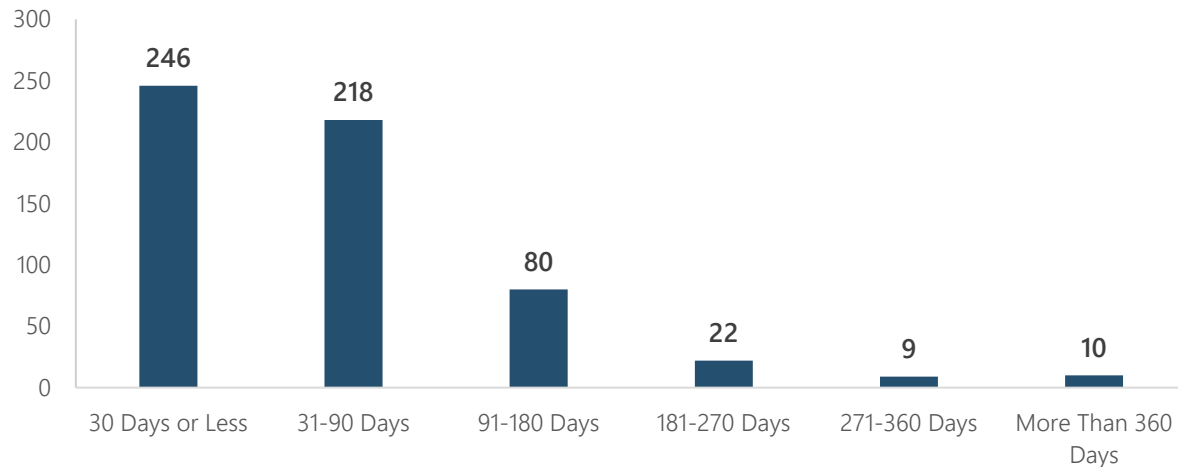
Channel	Reports Filed		Reports Filed Anonymously	
 Online	492	82.14%	359	59.93%
 Mail	35	5.84%	26	4.34%
 E-mail	44	7.35%	5	0.83%
 Phone	19	3.17%	6	1.00%
<b>Other</b> (Fax and Walk-In)	9	1.50%	4	0.67%
<b>Total</b>	<b>599</b>	<b>100.00%</b>	<b>400</b>	<b>66.80%</b>

Regardless of the reporting channel used, each report is assigned a unique tracking number and is systematically reviewed so it can be resolved as efficiently and effectively as possible. Having the Whistleblower Program as the City’s central point for report intake and coordinated referral helps ensure issues and risk trends are identified, assigned, and investigated in a timely manner, so that city management can address them.

## REPORT CLOSURE TIME

**The Whistleblower Program closed 585 reports in fiscal year 2019-20 and did so in an average of 64 days.** The program closed 464 (79 percent) of the 585 reports within 90 days of receipt, nearly achieving its goal to close at least 80 percent of all reports within 90 days. Exhibit 5 shows the age of reports that were closed in fiscal year 2019-20.

**Exhibit 5: 79 Percent of Reports Closed in Fiscal Year 2019-20 Were Closed Within 90 Days**



If reports are not resolved in a timely manner, reporters may conclude that their allegations are not taken seriously. However, there are several factors that can influence report closure time, including:

- The complexity of the report's allegations.
- The number of allegations made in the report.
- The availability of corroborating witnesses and evidence.

**The Whistleblower Program uses a co-sourced investigation model to resolve reports.**

Whistleblower Program staff in the Controller's Office leads certain investigations, whereas others may be referred to another city department involved in the allegation or with jurisdictional oversight for investigation and response. Although it can cause some reports to remain open longer, coordinating with other departments uses the expertise of all involved and leverages resources to ensure all allegations are effectively resolved. Management of the department associated with the report must respond to the Whistleblower Program on any action(s) taken in response to the report.

## DISPOSITION OF CLOSED REPORTS

**Of the 585 reports closed, over half (318, or 54 percent) reached closure after an investigation.**

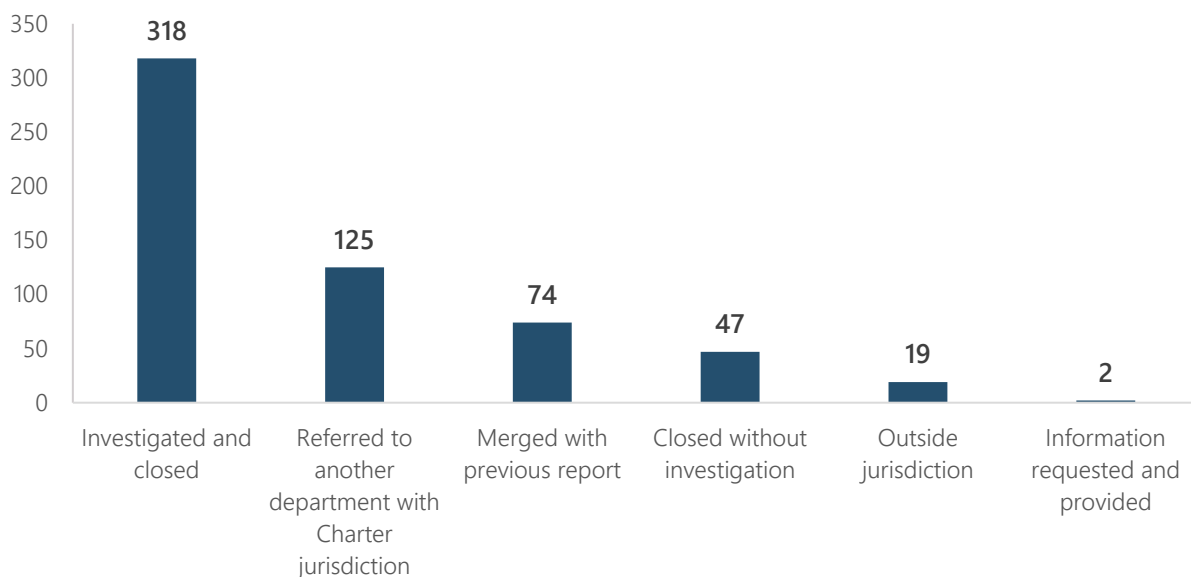
Investigation includes research and other preliminary information developed in determining whether a full investigation is warranted or possible.

The remaining 267 closed reports (46 percent) were categorized as follows:

- Referred to another department with Charter jurisdiction. Reporter was referred to the city department with Charter-granted jurisdiction over the alleged issue.
- Merged with previous report. Reporter provided information for a matter that is already under investigation or that the Whistleblower Program previously investigated.
- Closed without investigation. Reporter provided insufficient information to investigate. For example, no indication of department, employee(s) involved, or vehicle number was given.
- Outside of jurisdiction. The alleged issue falls within the jurisdiction of a federal, state, or other noncity government agency or is a suggestion or general report about decisions that are within management's discretion. The Whistleblower Program will advise reporters to file such reports with another fraud hotline program, where one is available and appropriate.
- Information requested and provided. Reporter requested publicly available information and was provided the information.

Exhibit 6 summarizes the disposition of the 585 reports closed in fiscal year 2019-20.

### Exhibit 6: 318 of the 585 Reports Closed in Fiscal Year 2019-20 Were Investigated



## REPORTS INVESTIGATED AND CLOSED, BY DEPARTMENT

The Whistleblower Program investigated and closed 318 reports in fiscal year 2019-20. The vast majority (281, or 88 percent) of the investigations occurred at city departments with more than 200 authorized FTE positions. Exhibit 7 summarizes the number of reports investigated and closed at these departments for the last three fiscal years.

**Exhibit 7: Reports Investigated and Closed in the Last Three Fiscal Years, by Department**

Department	Fiscal Year (FY)			Total	Ratio of the Percentage of Reports Investigated and Closed Divided by Department's Percentage of City Workforce <sup>a</sup>		
	2017-18	2018-19	2019-20		FY 2017-18	FY 2018-19	FY 2019-20
Public Health	53	65	88	206	1.11	1.22	1.35
Municipal Transportation	35	41	30	106	0.89	0.92	0.54
Human Services	30	21	16	67	2.01	1.27	0.78
Public Works	19	27	18	64	1.81	2.28	1.22
Sheriff	11	19	28	58	1.53	2.37	2.85
Public Utilities	9	14	12	35	0.58	0.80	0.56
Fire	4	10	21	35	0.32	0.73	1.25
City Administrator	5	7	11	23	0.89	1.09	1.32
Airport	5	7	9	21	0.42	0.53	0.55
Recreation and Park	4	7	9	20	0.58	0.92	0.97
Public Library	6	4	5	15	1.28	0.77	0.78
Police	4	2	4	10	0.20	0.09	0.14
Building Inspection	2	3	5	10	0.98	1.33	1.83
Emergency Management	2	3	2	7	1.07	1.41	0.77
Planning	4	0	3	7	2.69	0.00	1.45
Controller	2	1	3	6	1.06	0.47	1.12
Human Resources	1	1	4	6	0.76	0.63	2.00
Port	1	2	2	5	0.51	0.92	0.74
Technology	3	0	2	5	1.63	0.00	0.83
Treasurer and Tax Collector	1	1	3	5	0.69	0.61	1.50
District Attorney	1	0	2	3	0.50	0.00	0.74
Juvenile Probation	0	0	3	3	0.00	0.00	1.41
City Attorney	0	1	0	1	0.00	0.43	0.00
Public Defender <sup>b</sup>	-	-	1	1	-	-	0.59
Assessor-Recorder <sup>b</sup>	-	-	0	0	-	-	0.00
All Others <sup>c</sup>	26	20	37	83	2.10	1.42	2.53
<b>Total<sup>d</sup></b>	<b>228</b>	<b>256</b>	<b>318</b>	<b>802</b>	<b>-</b>	<b>-</b>	<b>-</b>

Notes:

<sup>a</sup> The City had the following authorized FTE positions

Fiscal Year	FTE	City and County of San Francisco, Salary Ordinance for Fiscal Year Ending:
2019-20	37,907	June 30, 2020, and Fiscal Year Ending June 30, 2021
2018-19	37,132	June 30, 2019, and Fiscal Year Ending June 30, 2020
2017-18	36,657.36	June 30, 2018, and Fiscal Year Ending June 30, 2019

Ratio Legend	
<= 1	Low
>1 but <= 1.25	Medium
>1.25	High

<sup>b</sup> Department had fewer than 200 authorized FTE positions or did not have reports investigated and closed in fiscal years 2017-18 and 2018-19.

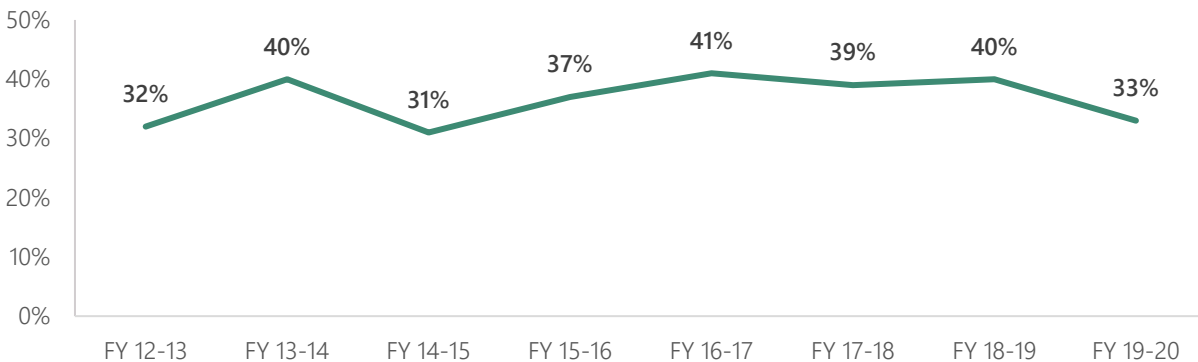
<sup>c</sup> Includes reports investigated and closed at departments with fewer than 200 authorized FTE positions. The names of these departments are excluded from this table to protect the confidentiality of those who reported.

<sup>d</sup> See Exhibit 6 for the disposition of all reports closed in the fiscal year, including those referred to another department with Charter-granted jurisdiction over the alleged issue and those closed because they had insufficient information to investigate, were merged with another report, or concerned alleged matters outside the City's jurisdiction.

## REPORT OUTCOMES

**Of the 318 investigations closed in fiscal year 2019-20, 106 (33 percent) resulted in departments taking corrective or preventive actions, of which there were 116.** Exhibit 8 shows the percentage of investigated reports that resulted in a corrective or preventive action since fiscal year 2012-13.

**Exhibit 8: Percentage of Investigated Reports That Resulted in Corrective or Preventive Action**



The Whistleblower Program receives and tracks information on the corrective and preventive actions taken by departments in response to reports. Some reports may involve multiple subjects or contain multiple allegations. Thus, a report may have multiple outcomes.

Allegations reported to the Whistleblower Program are substantiated at a higher rate and result in more corrective and preventive actions when well-informed reporters make high-quality reports that are effectively investigated. The Whistleblower Program educates employees on matters appropriate for investigation by publishing bulletins to make employees aware of the red flags associated with costly occupational frauds. The program has issued bulletins on [construction materials fraud](#), [supply chain fraud](#), [incompatible activities](#), and [overtime abuse](#).

The Whistleblower Program focuses on investigative excellence by collaborating with other jurisdictions to host fraud hotline webinars. In this fiscal year, the program hosted two webinars to promote leading fraud hotline operational practices and effective investigation techniques to jurisdictions throughout the United States. The first webinar, presented in November 2019, was "[Guarding Credibility: Maintaining Objectivity in Government Oversight Agencies](#)." The second webinar, presented in June 2020, was "[Using Root Cause Analysis to Enhance Your Anti-Fraud and Ethics Process](#)."

The Department of Human Resources publishes a [discipline checklist](#) to guide departments through the entire disciplinary process. For most offenses, department management is to use a system of progressive discipline under which the employee is given increasingly more severe discipline each time the employee commits an offense. However, management is not bound by progressive discipline in cases of serious offenses. In these cases, no specific warning or prior disciplinary action must precede an employee being separated from service for cause. A progressive discipline process may include an oral warning, a written warning, a suspension, and finally, separation for cause.

Exhibit 9 shows, by department, the 106 investigations that resulted in corrective or preventive action in fiscal year 2019-20.

**Exhibit 9: Investigations That Resulted in Corrective or Preventive Actions in Fiscal Year 2019-20, by Department**

Department	Number of Investigations
Public Health	41
Municipal Transportation	14
Public Works	8
Fire	7
Public Utilities	6
All Others*	6
Sheriff	5
Human Services	4
Airport	3
Police	2
Recreation and Park	2
Public Library	2
Human Resources	2
City Administrator	1
Emergency Management	1
Juvenile Probation	1
Planning	1
<b>Total</b>	<b>106</b>

\* Includes reports investigated and closed at departments with fewer than 200 authorized FTE positions. The names of these departments are excluded from this table to protect the confidentiality of those who reported.

Exhibit 10 shows the corrective or preventive actions that departments took—116 actions resulting from 106 investigations—in fiscal year 2019-20.

**Exhibit 10: Type of Corrective or Preventive Actions in Fiscal Year 2019-20**

Action Taken	Quarter1	Quarter 2	Quarter 3	Quarter 4	Total
Personnel Action					
<i>Employee Counseled (Verbal/Written Warning)</i>	20	11	7	6	44
<i>Personnel Action Pending</i>	4	-	5	8	17
<i>Employee Terminated</i>	1	-	-	-	1
<i>Contractor Employee Terminated<sup>a</sup></i>	-	-	1	-	1
<i>Employee Resigned During Investigation</i>	-	1	1	-	2
<i>Employee Suspended</i>	-	-	-	-	-
Other Corrective Action <sup>b</sup>	12	11	-	-	23
Procedures Changed/Reinforced	4	8	6	10	28
Restitution/Repayment	-	-	-	-	-
<b>Total</b>	<b>41</b>	<b>31</b>	<b>20</b>	<b>24</b>	<b>116</b>

Notes:

<sup>a</sup> City Contractors' employees may also be the subject of whistleblower complaints and face personnel actions. The Whistleblower Program began distinguishing contractor employee terminations from city employee terminations in Quarter 3 of fiscal year 2019-20.

<sup>b</sup> *Other Corrective Action* generally includes nonpersonnel corrective actions. Examples include requiring an employee to request approval for additional employment, making employees sign an acknowledgement of receipt of policies, and an employee amending their statement of economic interests.



## REPORTS REFERRED TO OTHER JURISDICTIONS

The Whistleblower Program must refer some of the reports it receives to other organizations that are required by law, contract, or policy to resolve them. Specifically, the Whistleblower Program must send certain reports to the:<sup>2</sup>

- City department with legal jurisdiction when federal, state, or local law requires another city department to adjudicate the report.
- City department designated in a collective bargaining agreement when the report can be resolved through a grievance mechanism established by an applicable contract between the City and a labor organization.
- Appropriate law enforcement agency (federal, state, or local) when the report involves allegations of conduct that may violate criminal law.
- Investigating city department when the report is related to an existing investigation by the District Attorney, City Attorney, or Ethics Commission and when the applicable official or department states in writing that investigation by the Whistleblower Program would substantially impede or delay its own investigation of the matter.
- Ethics Commission and City Attorney when the report alleges conduct that may violate local campaign finance, lobbying, conflict of interest, or governmental ethics laws, regulations, or rules.

The Whistleblower Program informs complaint reporters when their allegations meet one of the above conditions and, when appropriate, ensures the report is addressed by referring it to the agency with jurisdiction or providing the complaint reporter with contact information for the agency with jurisdiction. Exhibit 11 shows for fiscal year 2019-20 the number of reports referred to other departments with Charter-granted jurisdiction over the topic of the report.

**Exhibit 11: Reports Referred to Another Department in Fiscal Year 2019-20, by Quarter**

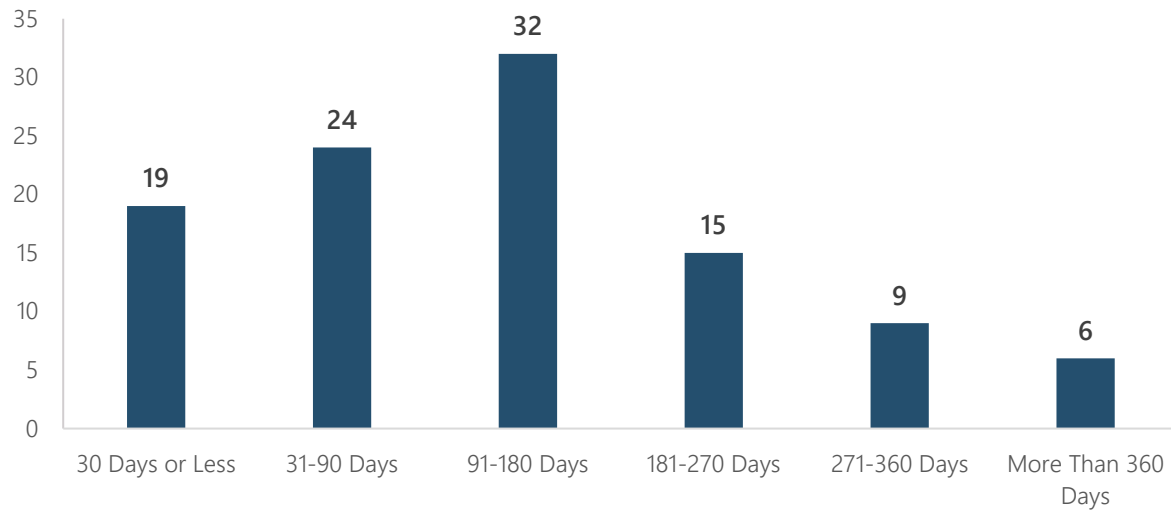
Organization to Which Report Was Referred	Quarter 1	Quarter 2	Quarter 3	Quarter 4	% of Referrals
Civil Service	10	9	13	7	31.20%
City Attorney	2	4	13	5	19.20%
Human Resources	11	3	4	2	16.00%
District Attorney	1	3	4	5	10.40%
Ethics	1	4	4	1	8.00%
Unified School District	3	1	1	-	4.00%
Public Health	-	2	-	1	2.40%
Building Inspection	-	-	-	1	0.80%
City College	-	-	-	1	0.80%
Contract Administration	1	-	-	-	0.80%
Mayor's Office of Disability	-	-	-	1	0.80%
Municipal Transportation	1	-	-	-	0.80%
Police Accountability	-	1	-	-	0.80%
Public Works	-	1	-	-	0.80%
Public Utilities	-	1	-	-	0.80%
Recreation and Park	-	-	1	-	0.80%
Shelter Monitoring Committee	-	1	-	-	0.80%
Superior Court	-	1	-	-	0.80%
<b>Total Referred Reports</b>	<b>30</b>	<b>31</b>	<b>40</b>	<b>24</b>	<b>100.00%</b>

<sup>2</sup> San Francisco Campaign and Governmental Conduct Code, Article IV, Section 4.107(b).

## REPORTS OPEN ON JUNE 30, 2020

**Of the 105 reports open on June 30, 2020,** 43 (or 41 percent) were 90 days old or less at that time. Exhibit 12 shows the age of reports open on June 30, 2020.

**Exhibit 12: 43 of the 105 Reports Open on June 30<sup>th</sup> Were 90 Days Old or Less**



The Whistleblower Program examines the factors that delay report closure and, in some cases, works with departments' leadership to address these issues. The Whistleblower Program has focused on training departmental staff responsible for investigating reports to standardize the investigation processes used, increase the investigative skillsets of these employees, and ensure they have a uniform understanding of the responsibilities entrusted to them to carry out Whistleblower Program investigations. Since March 2020, the COVID-19 pandemic has affected the ability of some departments to investigate certain reports or provide information in a timely manner.

## WHISTLEBLOWER RETALIATION

**Retaliation against whistleblowers is illegal.** Protections exist for city officers and employees who in good faith file, or attempt to file, reports with the Whistleblower Program, Ethics Commission, District Attorney, City Attorney, or their own department, or who provide any information in connection with or otherwise cooperate with a whistleblower investigation.<sup>3</sup>

Whistleblower protections also apply to city contractors and their employees who file reports with any supervisor in a city department or who provide any information in connection with or otherwise cooperate with a whistleblower investigation.<sup>4</sup>

**The Ethics Commission is the city department responsible for investigating reports alleging whistleblower retaliation.** Exhibit 13 summarizes the results reported by the City's Ethics Commission, including the 15 retaliation reports (11 related to the Whistleblower Program) that were open on June 30<sup>th</sup> and the number of retaliation reports the Ethics Commission received, closed, and sustained in Quarter 4.

### Exhibit 13: Whistleblower Retaliation Reports Received and Closed by the Ethics Commission in Quarter 4

Retaliation Reports With the Ethics Commission	All Retaliation Reports	Retaliation Reports Related to the Whistleblower Program
<b>Open on April 1, 2020</b>	19	13
Received	1	1
Closed	5	3
Sustained (of those closed)	-	-
<b>Open on June 30, 2020</b>	15	11

Source: Ethics Commission

To establish retaliation, a reporter must demonstrate by a preponderance of the evidence that the complaint reporter's engagement in a protected activity was a substantial motivating factor for an adverse action that a city officer or employee took against the complaint reporter. Reports of retaliation must be filed no later than two years after the date of the alleged retaliation.

The Ethics Commission's [website](#) has more information on whistleblower protections, retaliation investigations, and available remedies in the event retaliation occurred.

<sup>3</sup> Ibid., Section 4.115(a).

<sup>4</sup> Ibid., Section 4.117(a).

## PUBLIC INTEGRITY TIP LINE

In response to the federal criminal charges filed against former Public Works Director Mohammed Nuru, which were made public on January 28, 2020, the Controller's Office and City Attorney's Office began a joint public corruption investigation and opened a Public Integrity Tip Line (Tip Line) on February 4<sup>th</sup> to gather information specific to the investigation. Also, the Controller's Office, in cooperation with the City Attorney's Office, instituted additional controls and reviews of Public Works contracts, purchase orders, and grants for red flags and process failures. On June 29<sup>th</sup> the Controller's Office issued "[Public Integrity Review: Preliminary Assessment of San Francisco Public Works Contracting](#)."

The Tip Line, which is staffed by Whistleblower Program investigators, received seven tips from April 1 through June 30, 2020. These tips were carefully reviewed to determine whether the information they contain could be used for the joint public corruption investigation or is more appropriate for another government agency to address. As shown in Exhibit 14, of the seven tips received:

- One was found to be relevant to the joint public corruption investigation and was referred to the City Attorney's Office for further review and coordination.
- Six were retained by the Whistleblower Program after consultation with the City Attorney, as the allegations were determined to be more appropriate for investigation by the Controller's Office.

### Exhibit 14: Disposition of Public Integrity Tip Line Tips in Quarter 4, by Department

Disposition	Number of Tips
Retained by Whistleblower Program	6
Referred to City Attorney	1
<b>Total</b>	<b>7</b>

### Public Integrity Tip Line Intake

Public integrity tips can be provided via e-mail at [publicintegrity@sfgov.org](mailto:publicintegrity@sfgov.org) or by phone at (415) 554-7657. All tips may be submitted anonymously and will remain confidential.

# Investigation Results

Investigations highlighted in this section resulted in a department taking some corrective or preventive action. The diversity of these allegations and resolutions demonstrates the breadth and complexity of the Whistleblower Program’s investigative work.

A complete list of reports published in previous reporting periods can be found on the [Whistleblower Program Summary Reports](#) page.

## SUMMARY OF ALL INVESTIGATIONS RESULTING IN CORRECTIVE OR PREVENTIVE ACTION IN QUARTER 4

In addition to the recommendations in “[Public Integrity Review: Preliminary Assessment of San Francisco Public Works Contracting](#),” published on June 29<sup>th</sup>, investigations highlighted in this section resulted in a department taking some corrective or preventive action in Quarter 4.

Allegation	Resolution Based on Investigation
Employees of a city contractor blocked an intersection and bike lane in a city vehicle and were discourteous to a member of the public when confronted.	The investigation substantiated the allegations. The department verbally warned the two employees and retrained them on the department’s driving policies.
An employee inappropriately used city time and resources to promote a family member’s participation in a contest.	The investigation found that the department approved the promotion of an event in which the employee’s family member was a contestant. Before the department advised the employee further, the employee posted event fliers in the workplace soliciting favor for their family member. The department counseled the employee on their inappropriate solicitation of coworkers, and the employee removed the fliers.
An employee has unreported secondary employment and did not disclose this business on a Statement of Economic Interests (Form 700). Also, the employee violated Civil Service rules in deciding to hire an employee who lacks the minimum qualifications for their position.	The investigation found the employee inappropriately had not disclosed their additional employment but had not engaged in additional employment since joining the department and did not plan on reactivating the business. The department re-issued the Statement of Incompatible Activities to the employee and confirmed with the employee that they are required to submit an Additional Employment Request should they re-engage in their secondary employment. The allegation of improper hiring was referred to the Civil Service Commission for investigation.

Allegation	Resolution Based on Investigation
An employee and division management inappropriately direct employees to drive city vehicles unnecessary miles to ensure the division retains their vehicles. Subject employee inappropriately used a city vehicle to drive to their home.	The investigation found that the division identifies its low-mileage city vehicles to ensure all vehicles are used regularly and that division management asks employees to drive vehicles long enough to adequately charge their batteries. The investigation also found that the employee had approval to commute to and from their residence in a city vehicle. The department states that it will re-issue the City's Vehicle Use Policy to all division employees and will review its fleet management protocols and evaluate whether additional controls are needed.
An employee made disrespectful remarks to a subordinate.	The investigation substantiated the allegation. The department counseled the employee and reminded them of their obligation to adhere to relevant city and department policies to treat coworkers and the public with respect.
Employees failed to install recommended equipment in the course of their duties, and the department did not address a previous complaint.	The investigation partially substantiated the allegation that employees did not install certain equipment consistent with industry best practices but did not substantiate that the department failed to address a previous complaint. The department directed the employees to follow industry best practices in future.
Employees falsify their timecards and do not follow industry standards in performing their work. The unit lacks appropriate safety measures, which violates industry standards. Managers give preferential treatment to some employees. Certain employees offer incentives in exchange for referrals. One employee has (unreported) additional employment. Another employee supervises a relative and approves the relative's timecards. Multiple employees do not meet the minimum qualifications of their classifications.	<p>The investigation substantiated that two employees regularly falsified their timecard entries and that the department did not have appropriate safety measures. The department counseled the employees to adhere to the department's time and attendance policies and created a corrective action plan to resolve the safety issues. The investigation did not substantiate the remaining allegations regarding preferential treatment to specific employees or offering incentives in exchange for referrals.</p> <p>The allegations regarding an employee's unreported additional employment and an employee supervising their relative were referred to the Department of Human Resources. Allegations regarding the merit system were referred to the Civil Service Commission.</p>
A manager did not notify an employee of their privacy rights in the workplace, and the employee was filmed by a contractor without their consent.	The investigation substantiated the allegations. The department counseled and retrained the manager on the City's employee rights policy.

Allegation	Resolution Based on Investigation
<p>An employee arrives late and leaves early, not fulfilling their job duties. The employee's supervisor is aware of this but has not taken corrective action. The supervisor lied about the employee to investigators in a previous investigation. Some employees were hired based on nepotism and do not meet the minimum qualifications for their classifications.</p>	<p>The investigation substantiated that the employee comes to work late and leaves early. The investigation did not substantiate that the supervisor had not taken corrective action as the supervisor is not responsible for approving the employee's timecards. However, the department has now assigned the employee to their supervisor's work location.</p> <p>The investigation also did not substantiate that the supervisor was untruthful to investigators in a previous investigation. Allegations regarding the hiring of unqualified individuals due to nepotism were referred to the Civil Service Commission.</p>
<p>An employee inappropriately disappears from the workplace, barely performs any work, takes long breaks, and works an excessive amount of overtime.</p>	<p>The investigation did not substantiate the allegations, but the department plans to implement new procedures to more effectively track and monitor overtime usage.</p>
<p>An employee falsifies time and attendance records by arriving late to work and claiming compensation for time that was not worked.</p>	<p>The investigation substantiated that the employee could not account for their time and attendance for part of one day and found that the employee inappropriately worked beyond their regularly scheduled hours, without a supervisor's prior written authorization, to make up for times when they were tardy. Disciplinary action is pending.</p>
<p>An employee acted unprofessionally by writing an e-mail in which they refused to perform work and threatened to add notable individuals to the correspondence. The employee is never in their office.</p>	<p>The first allegation was previously investigated, substantiated, and resulted in a written coaching and counseling document issued to the employee. The investigation did not substantiate that the employee is never in their office.</p>
<p>An employee engaged in unauthorized medical research and misused city resources to support the research.</p>	<p>The investigation determined that the allegation was similar to one received in a previous complaint that was closed pending corrective and disciplinary action. The follow-up to the pending action resulting from the previous complaint will include the content of this allegation.</p>
<p>Two employees were witnessed engaging in sexual activity in a secluded but publicly-accessible location.</p>	<p>The investigation did not substantiate the allegation, but the department reminded the employees of their obligations under the city Policy on Family and Romantic Relationships at Work.</p>

Allegation	Resolution Based on Investigation
<p>An employee misuses city funds on inappropriate purchases. Without authorization, the employee installed a camera in the workplace to screen people entering the workplace. The employee takes excessive lunch breaks.</p>	<p>The investigation did not substantiate that the employee misused city funds or took excessive lunch breaks but did substantiate that the employee had installed a camera in the workplace, contrary to departmental privacy policies. The investigation also found that the employee and their supervisor had lied to investigators about the purpose of the camera and their knowledge of it. Disciplinary action against both the employee and supervisor is pending.</p>
<p>A manager favors young female employees by giving them promotions and new titles. The manager encourages a hostile work environment by intimidating and bullying his staff. The manager retaliated against an employee by inappropriately reassigning the employee to a subject matter area with which they were unfamiliar. The manager also inappropriately shared private information about an employee with their supervisor.</p>	<p>A previous investigation addressed the allegations of favoritism and creating a hostile work environment. The current investigation substantiated the alleged inappropriate reassignment and sharing of private information.</p> <p>The department assigned the manager new duties and removed certain employees from the manager's supervision. Also, the department put the manager on a corrective action plan and provided additional coaching and counseling.</p>
<p>An employee harassed a coworker, and department management ignored complaints about it.</p>	<p>The investigation substantiated that the employee harassed other employees but did not substantiate that management ignored complaints of harassment. Disciplinary action is pending.</p>
<p>Management designated too many employees as essential, which required them to work on site, thereby increasing staff's risk of exposure to COVID-19. Management inappropriately used personal devices to conduct city business and forced staff to inappropriately take personal leave when staff expressed concerns about the risk of working on site during the pandemic.</p>	<p>The investigation did not substantiate the allegations. However, in response to the allegations, and as a part of its evolving response to challenges posed by the COVID-19 pandemic, the department developed and implemented changes to its operating procedures to further limit the risk of its employees being exposed to the coronavirus.</p>



Allegation	Resolution Based on Investigation
<p>Management shows favoritism to certain employees and allows them to falsify time and attendance records. Some managers and employees have unreported secondary employment. These practices unnecessarily strain the other staff.</p>	<p>The investigation substantiated that two managers favored certain employees, allowed them to falsify their time and attendance records, and ignored complaints about the falsification. The investigation also substantiated that one of the managers and at least one employee had unreported secondary employment. The investigation did not substantiate that these practices strained the other staff.</p> <p>The department states it will train management on its time and attendance procedures, provide management training, place written reprimands in their personnel files, and counsel them on appropriate behavior with staff. The department will also require employees with secondary employment to apply for departmental approval. Additional personnel action is pending.</p>
<p>A department's operation regularly exceeds safe operating levels, which limits the ability of employees to monitor their work, respond to client needs and incidents, ensure privacy, and work in a secure environment. The operation does not have policies and procedures for or adequately staff one of its programs.</p>	<p>The investigation found that:</p> <ul style="list-style-type: none"> <li>• The operation regularly exceeds capacity, but management cannot limit the number of incoming clients. That is, it cannot turn away clients.</li> <li>• Incidental exposure of clients' private information is unavoidable in the working environment and necessary to serve clients.</li> <li>• For the security of its clients, the operation does not provide locked facilities.</li> </ul> <p>The investigation also found that, as part of a separate review, the department had previously identified and proactively addressed some of these issues. Specifically, the department had found that the staff-to-client ratio regularly exceeded prescribed levels and that clients had to share small spaces, which did not allow privacy. In response to these findings, the department:</p> <ul style="list-style-type: none"> <li>• Adjusted the operation's workflow, space, and processes to ensure the staff-to-client ratio is appropriately monitored and managed.</li> <li>• Ended practices that did not provide privacy to clients.</li> <li>• Is working with the operation's management to ensure employees and clients are protected from security threats.</li> </ul>

Allegation	Resolution Based on Investigation
<p>Employees falsify time and attendance records by clocking in and out for each other and claim compensation for time they did not work.</p> <p>Management creates unnecessary work for overtime that can be done during regular working hours and allowed one employee to drive home while intoxicated.</p> <p>An employee has unreported secondary employment and instructs other employees to do work for that business on city time.</p>	<p>The investigation found that at least two employees regularly falsified time and attendance records by having their coworkers clock out for them hours after they had left work. Supervisors allowed, and in some cases instructed, staff to clock other employees out.</p> <p>The investigation also found that employees misuse city vehicles for personal purposes, and that one employee had unauthorized secondary employment. The investigation did not substantiate that the employee with secondary employment or other employees worked for that business on city time.</p> <p>The department counseled employees on time and attendance policies, overtime, and the appropriate use of city vehicles and required one employee to submit an additional employment request form.</p> <p>The investigation found that, after being told an employee was intoxicated, a supervisor allowed the employee to drive home, which is contrary to proper procedure. The supervisor was required to attend Post Accident &amp; Reasonable Suspicion Training for supervisors. Additional personnel action is pending.</p>
<p>An employee harassed other employees.</p>	<p>The investigation substantiated the allegation. Disciplinary action is pending.</p>
<p>An employee falsifies their time and attendance records. The employee and other employees have unreported secondary employment.</p>	<p>The investigation did not substantiate that any employee falsified time and attendance records but did find that one employee had unreported secondary employment several years ago. Although the employee no longer has secondary employment, the department counseled the employee regarding the previous violation.</p>
<p>A supervisor insufficiently monitored an employee while performing their duties, which led to a task not being properly completed. Another employee did not act professionally when the issue was brought to their attention.</p>	<p>The investigation found that the supervisor appropriately monitored the employee, but the employee violated policies and procedures regarding the task. To prevent this in the future, management reinforced proper policies and procedures with the employees.</p>

## File a Whistleblower Report

Report the misuse of funds, waste, or mismanagement in City and County of San Francisco programs and operations by contacting the Whistleblower Program.

**Internet:** <http://sfcontroller.org/whistleblower-program>

**Telephone:** 311 or, if outside the 415 area code, 415-701-2311

**OR download a [report form](#) and return it via:**

**E-Mail:** [whistleblower@sfgov.org](mailto:whistleblower@sfgov.org)

**Mail:** Office of the Controller  
Attention: Whistleblower Program  
1 Dr. Carlton B. Goodlett Place, Room 316  
San Francisco, CA 94102

**Fax:** 415-554-7856

**INVESTIGATIONS ARE CONFIDENTIAL.  
REPORTERS MAY REMAIN ANONYMOUS.**

### Whistleblower Program Contact Information

Dave Jensen	<i>Supervising Investigator</i>	415-915-8105	<a href="mailto:dave.a.jensen@sfgov.org">dave.a.jensen@sfgov.org</a>
Eryl Karr	<i>Senior Investigator</i>	415-610-5044	<a href="mailto:eryl.karr@sfgov.org">eryl.karr@sfgov.org</a>
Steven Muñoz	<i>Senior Investigator</i>	415-636-7798	<a href="mailto:steven.munoz@sfgov.org">steven.munoz@sfgov.org</a>
Matthew Thomas	<i>Acting Senior Investigator</i>	415-855-2967	<a href="mailto:matthew.s.thomas@sfgov.org">matthew.s.thomas@sfgov.org</a>
Tiffany Wong	<i>Senior Investigator</i>	415-636-8578	<a href="mailto:tiffany.b.wong@sfgov.org">tiffany.b.wong@sfgov.org</a>
William Zhou	<i>Acting Senior Investigator</i>	415-636-9405	<a href="mailto:william.zhou@sfgov.org">william.zhou@sfgov.org</a>

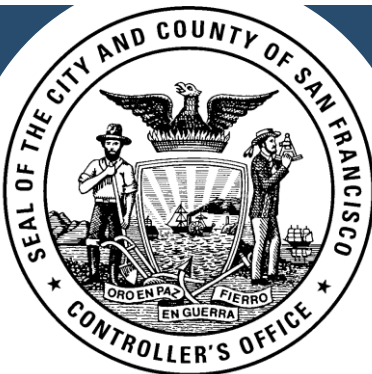
## File a Public Integrity Tip

Report Public Integrity Tips by e-mail at [publicintegrity@sfgov.org](mailto:publicintegrity@sfgov.org) or by phone at (415) 554-7657. All tips may be submitted anonymously and will remain confidential.

# Whistleblower Program Update

## Review of Activities and Initiatives

### Presentation to Ethics Commission



**CITY & COUNTY OF SAN FRANCISCO**

Office of the Controller  
City Services Auditor

Agenda Item 5 - Page 028  
Mark de la Rosa | Dave Jensen

11.13.2020

## Authority for the Whistleblower Program

The authority for Whistleblower Program investigations is derived from state and city law:

- California Government Code, Section 53087.6
- San Francisco Charter, Appendix F
- San Francisco Campaign and Governmental Conduct Code, Article IV

## Matters Appropriate for Investigation

The Whistleblower Program shall investigate or otherwise attempt to resolve complaints concerning:

- Misuse of city funds
- Improper activities by city officers and employees
- Deficiencies in the quality and delivery of government services
- Wasteful and inefficient government practices

## Referral of Certain Complaints

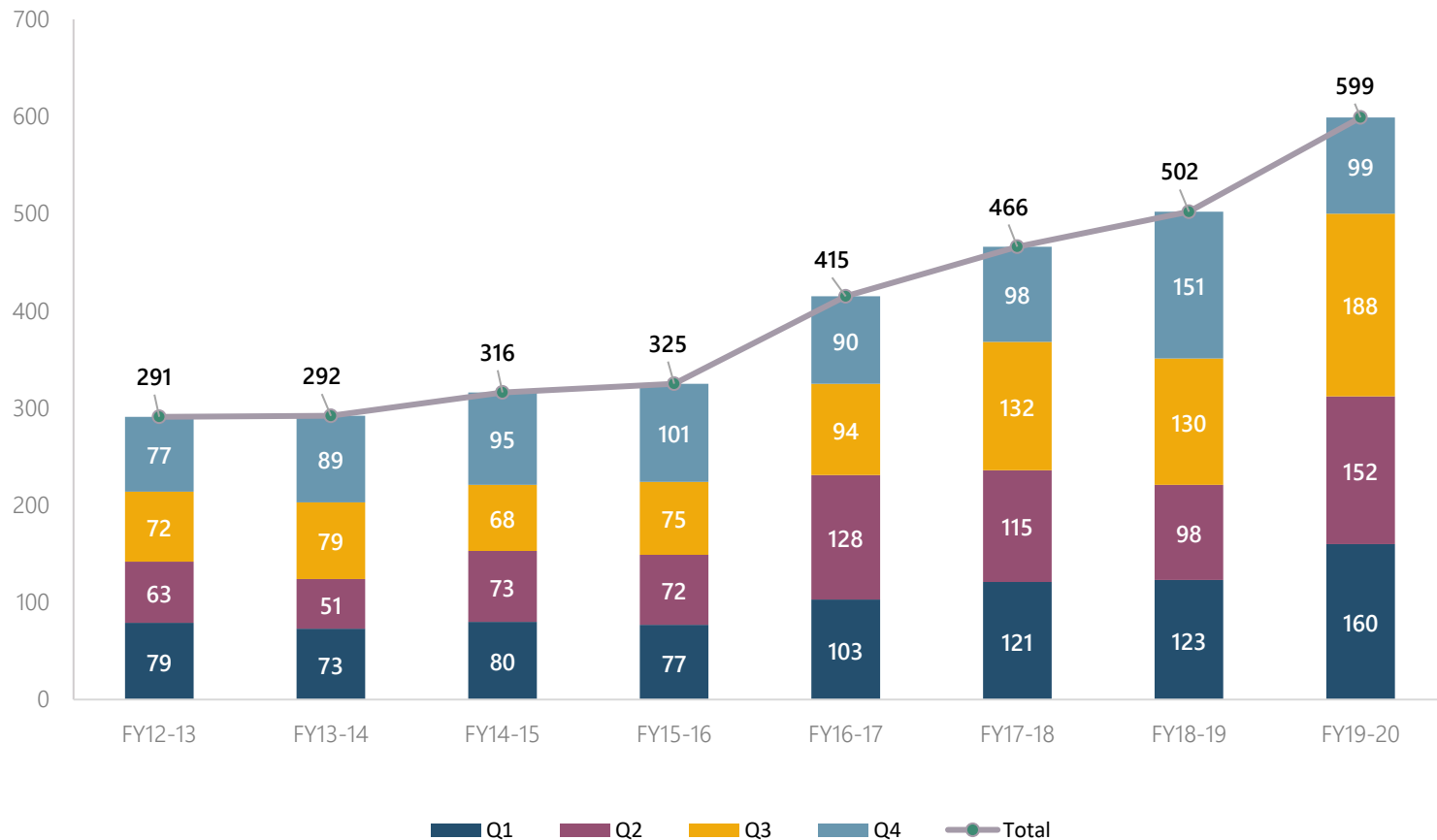
The Whistleblower Program shall refer complaints that:

- Another city department is required by federal, state, or local law to adjudicate
- May be resolved through a grievance mechanism established by a bargaining unit or contract
- Involve violations of criminal law
- Are subject to an existing investigation
- Allege violations of governmental ethics laws

# Whistleblower Program

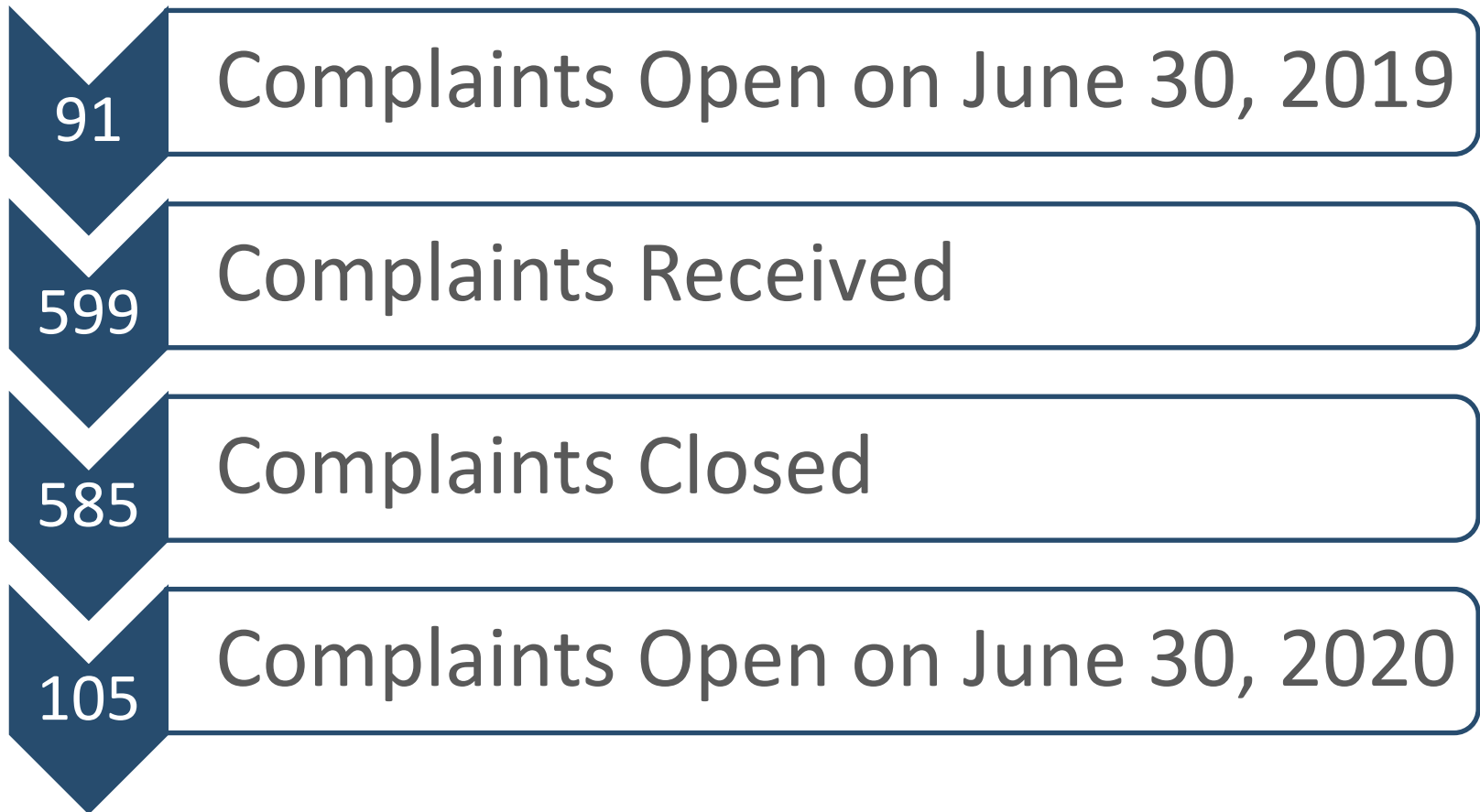
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## Number of Reports Received Since July 1, 2012









## Fiscal Year 2019-20 Report Volume



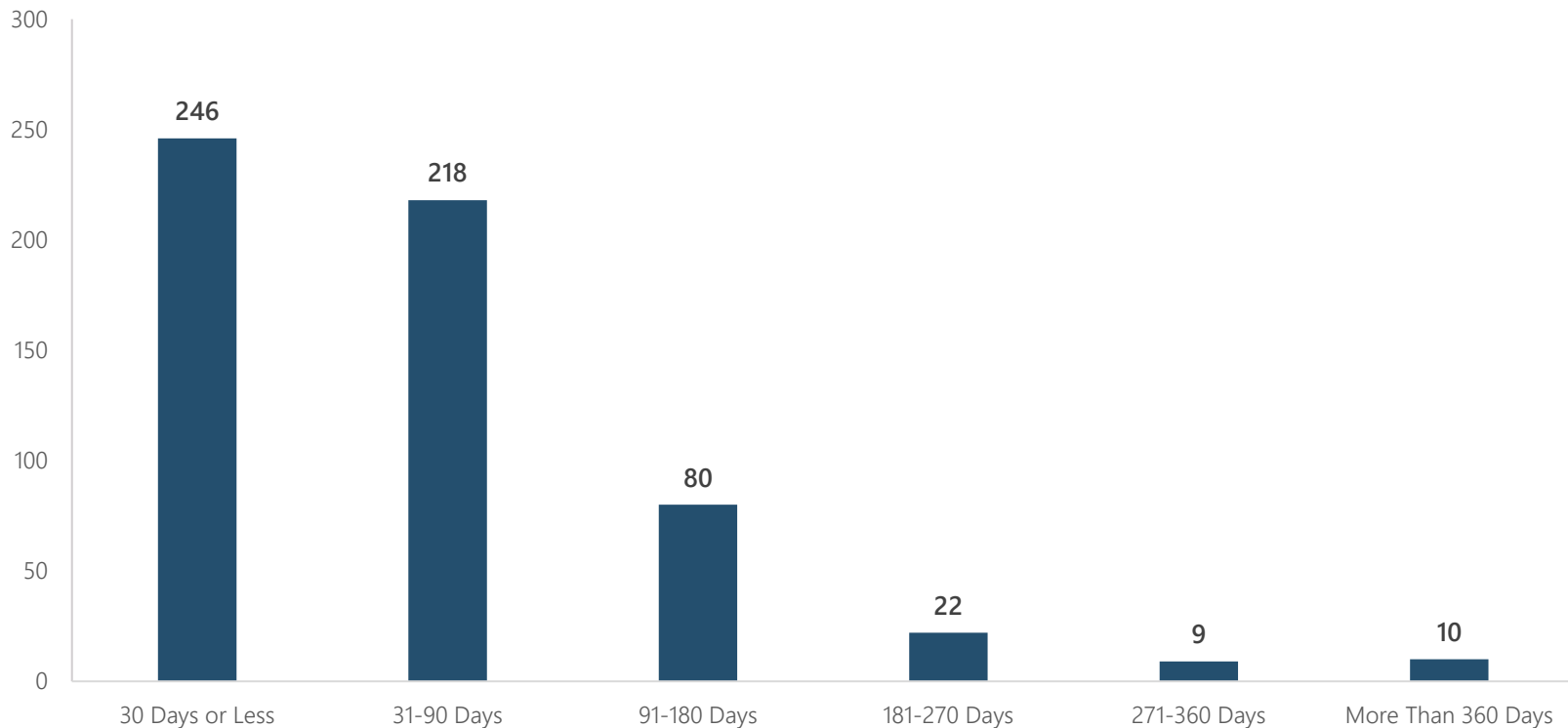
# Whistleblower Program

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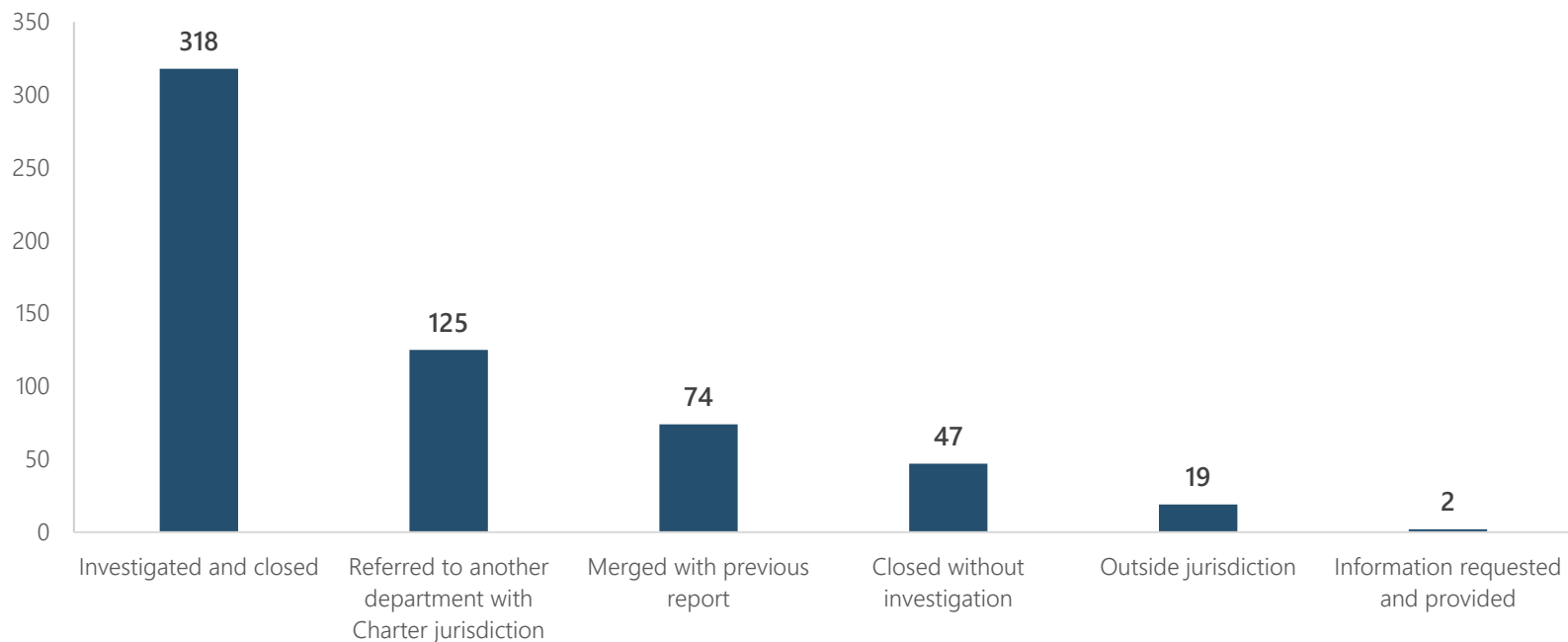
## 82 Percent of Reports Received in Fiscal Year 2019-20 Came Through the Online Web Form

Channel	Reports Filed		Reports Filed Anonymously	
Online 	492	82%	359	60%
Mail 	35	6%	26	4%
E-mail 	44	7%	5	1%
Phone 	19	3%	6	1%
Other (Fax and Walk-In)	9	2%	4	1%
Total	599	100%	400	67%

## 79 Percent of Reports Closed in Fiscal Year 2019-20 Were Closed Within 90 Days



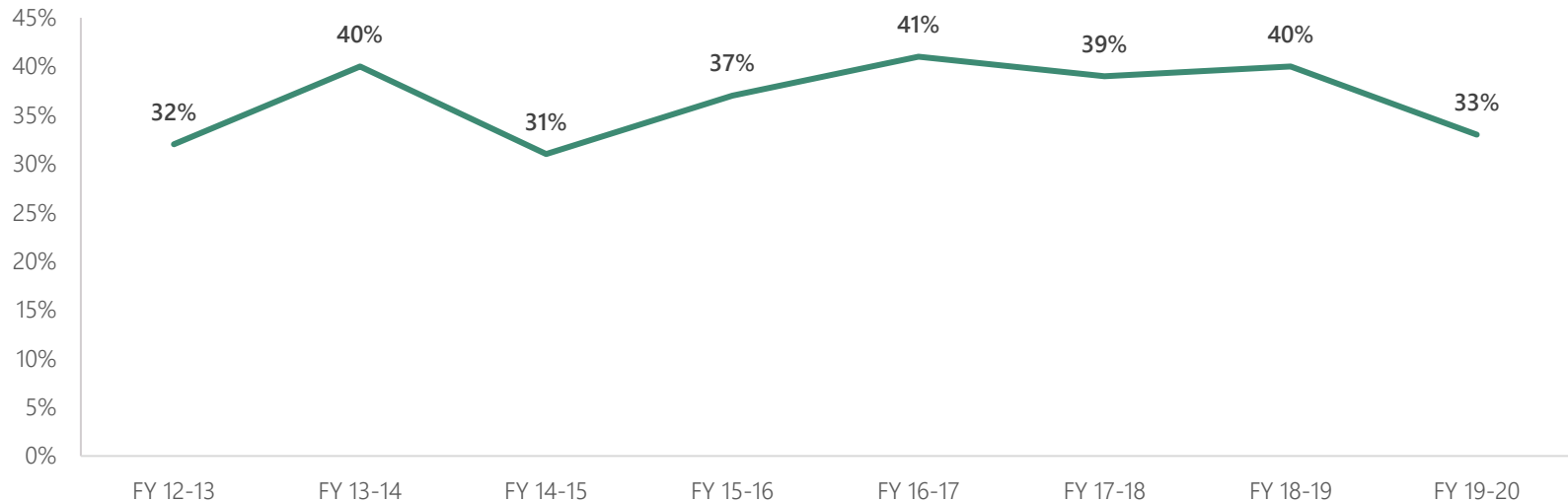
## 54 Percent of Reports Closed in Fiscal Year 2019-20 Were Investigated



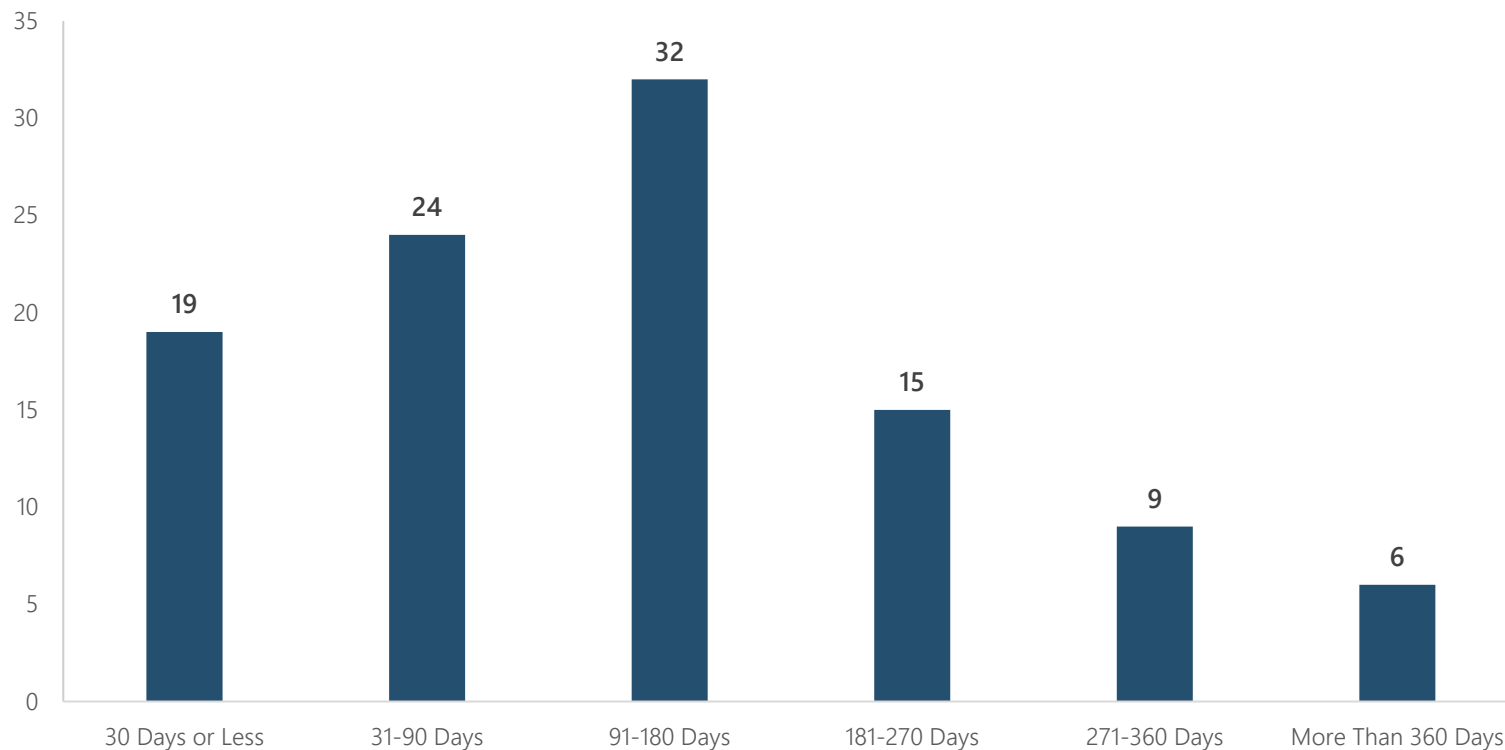
## Disposition of Closed Complaints

Disposition	FY 16-17	FY 17-18	FY 18-19	FY 19-20
Investigated	63%	52%	52%	54%
Referred to department with Charter jurisdiction	10%	18%	15%	21%
Merged	15%	13%	15%	13%
No investigation	10%	11%	12%	8%
Outside of jurisdiction	2%	6%	6%	3%
Information Requested and Provided	-	-	-	<1%

## Percentage of Investigated Reports That Resulted in Corrective or Preventive Action



## 43 of the 105 Reports Open on June 30th Were 90 Days Old or Less



## Fiscal Year 2020-21 Initiatives

- **Investigations**
  - Close 75% of whistleblower cases within 90 days
- **Quarterly Reporting**
  - Issue quarterly reports on the status of Whistleblower Program activities
- **Webinars**
  - Host two hosts webinars to promote leading fraud hotline operational practices and effective investigation techniques to jurisdictions throughout the United States
- **Ongoing Efforts to Ensure a Best-in-Class Program**
  - Instituting a new case management system
  - Training department liaisons on conducting remote investigations
  - Learning from and providing information to peer jurisdictions