



July 29, 2019

Jim Nobles
Office of the Legislative Auditor
658 Cedar Street
Saint Paul, MN 55155

Dear Legislative Auditor Nobles:

I am writing to express my concerns regarding the "State Government Employee Whistleblower Portal," a website recently launched by Senate Majority Leader Paul Gazelka and the Minnesota Senate Republican Caucus. I also seek your assistance in obtaining additional information about this website and establishing appropriate procedures to ensure it does not interfere with the execution of our statutory responsibilities to prevent and address fraud, waste, and abuse in state government.

It is my sincere hope that you were consulted during the development of this website, but I fear that due to its partisan nature, you may have been excluded. The website solicits "stories of fraud, waste, and abuse" from Executive Branch employees. These stories are "confidentially" submitted "directly" to Sen. Gazelka and his staff. The website provides no information about an internal controls process to support its claim that stories will be treated with confidentiality and privacy, particularly when stories are "shared with legislative staff or other members of the legislature." In fact, the website explicitly states that the stories will not be protected by the Minnesota Government Data Practices Act (MGDPA). Alarming, submissions made through the website lack the MGDPA protections that exist for employees who submit reports to the Executive Branch or your office, including the MGDPA's private right of action to bring suit and recover damages and attorney fees should a data breach occur.

The website states that the stories are being collected "for informational purposes only" and that, due to volume, there is "no guarantee" of a response to every submission. The website also advertises that submitted comments are "essential to finding a solution to government waste, fraud, and abuse." If the website's sole purpose is information gathering, rather than resolution, employees may be surprised to discover that their reports of wrongdoing will not be used to investigate and resolve the reported activity. For the information to actually result in improved government, employee safety, or law enforcement action, information must be shared with the Executive Branch. We are currently unaware of any procedures that would enable Sen. Gazelka and his staff to be good stewards of the information and ensure that it is passed along to the agencies, which are in the best position to remedy any concerns.

As you are well aware, the Executive Branch has longstanding processes for employees to raise concerns of fraud, waste, or illegal or unethical behavior. We have established internal reporting procedures under our Respectful Workplace, Sexual Harassment Prohibited, and Harassment and Discrimination Prohibited policies. We have a strong statutory Code of Ethics for Executive Branch employees (there is no statutory counterpart for the legislature). Reports can be made to any agency's ethics officer. Minnesota Management and Budget (MMB) has a state ethics officer, and reports of unethical behavior also can be made to MMB. All individuals who report violations of law are protected against retaliation by the State Whistleblower Act.

Similarly, as you well know, the Office of the Legislative Auditor (OLA) has a long-established process to accept all reports of possible misuse of public funds or resources. Your non-partisan office, which is established in law, is the most appropriate place for complaints if employees have concerns and are uncomfortable with reporting within their agency or to MMB. The OLA has an intake Allegation Form for this exact purpose. Additionally, agencies are required to report violations to the OLA when there is probable cause of a substantial ethics violation or information about misuse of public funds or resources. Unlike the OLA, which was created in statute and has established processes, reporting mechanisms, and legal responsibility for data security, this new website is unsupported by any legal framework, and there are no laws or rules governing data security or privacy for reports submitted to the site.

Given our long history of working effectively together to protect public resources and trust, I am certain that you share many of the concerns I have raised here. It is incumbent upon us both to take appropriate action now to reduce confusion, and to protect state employees, state information, and state resources. Most importantly, it is critical to the effective and efficient operation of government that information regarding potential wrongdoing, waste, or outright fraud is shared in a manner that permits the appropriate entities to take prompt corrective action.

As the arm of the Legislative Branch responsible for auditing state agencies, evaluating public programs, and investigating alleged misuse of public money, I am turning to you to obtain further information to ensure we can minimize the risks created by this undeveloped and confusing website. To determine the appropriate next steps, I would appreciate your assistance in obtaining answers to the following questions:

Concerns about Consultation with OLA

1. Did Sen. Gazelka, his staff, or representatives of the Senate Republican Caucus consult the OLA on the website or in the development of any internal controls or policies or processes to guide staff who are soliciting and receiving submissions?
2. Did Sen. Gazelka, his staff, or representatives of the Senate Republican Caucus inform you that they were dissatisfied or had concerns with the OLA's efforts to investigate the misuse of public resources?
3. Does the OLA share our concern that this new website encroaches on the OLA's statutory jurisdiction?

4. Will the information shared through the new website be provided to the OLA for appropriate action? If so, how will the OLA treat that data for purposes of the MGDPA?

Concerns about Privacy and Process

1. What will Sen. Gazelka, his staff, and representatives of the Senate Republican Caucus do with highly sensitive personnel information? Do you know if there is a records retention schedule or controls in place to prevent the dissemination of sensitive personnel data?
2. Are you concerned that naming this new website the "State government employee whistleblower portal" could create the perception that this is an official reporting channel rather than a partisan information gathering website?
3. Who will investigate allegations or remedy substantiated concerns? Are you aware of any mechanism developed by the Senate Republican Caucus to take appropriate action to respond to such complaints? Do you know if the Senate Republican Caucus is staffed to investigate those complaints? Will the OLA conduct investigations on behalf of the Senate Republican Caucus?
4. When our employees come to us with questions about what they can expect if they submit information to the website, we want to be able to provide them accurate information. Do you have copies of the written policies and protocols governing the information shared through the new website?
5. Does the website's indication that submissions are for informational purposes and responses are not guaranteed mean that employees should have no expectation of action on their submissions?
6. Are you aware of any efforts to penalize those who submit false reports through the portal? What tools are available to Sen. Gazelka, his staff, or representatives of the Senate Republican Caucus to prevent or limit the submission of false reports and what protections are available to the subjects of false or inaccurate reports?

Concerns about Potential Risks

1. As you know, various state agencies routinely receive federal funds and have corresponding requirements to report potential fraud or misuse of those funds within specified time periods. Failure to comply can result in loss of federal funding and other penalties. Have Sen. Gazelka, his staff, or representatives of the Senate Republican Caucus discussed with you how they will ensure compliance with those federal reporting requirements?
2. Are you aware of any safeguards in place to ensure that any employees accused of wrongdoing, policy violations, or behavior subject to discipline are afforded due process protections mandated by the United States Constitution and union contracts?

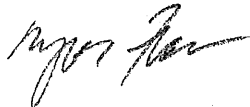
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3. Do you know how the Senate Republican Caucus plans to handle allegations of wrongdoing to protect themselves from claims of defamation?
4. The website states that information "will NOT be disclosed without your express consent." Are you concerned about the potential for Sen. Gazelka, his staff, or representatives of the Senate Republican Caucus to become witnesses in lawsuits where a report to the new website may be implicated? How can recipients of this information protect it from disclosure if they receive a lawful subpoena seeking submitted information and submitter identity?
5. In light of the recent decision of the Minnesota Court of Appeals limiting legislative immunity to suit when actions are personal or political in nature, are you concerned that a partisan reporting tool could expose the state, members of the legislature, and their staff to legal liability?
6. Are you concerned that the failure to act upon a submission to the new website will expose the Senate, and the even the state as a whole, to liability?

Given your charge to protect government resources and investigate waste, fraud, and abuse, I assume you are already considering these very questions. The fact that the website is an initiative of the Senate Republican Caucus – and not the Senate as a whole or the legislature as an institution – raises many questions about the purpose of this effort and may reflect a process that was not fully vetted. I look forward to your responses and hope that, together, we can take steps to minimize risk to the state and its employees while protecting public resources. Thank you for attention to this matter.

Sincerely,



Myron Frans
Commissioner

Cc: Representative Rick Hansen, Chair
Legislative Audit Commission

<https://www.mnsenaterepublicans.com/mnwhistleblower/>

MNSRC
Minnesota Senate Republican Caucus

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State government employee whistleblower portal

Unfortunately, we continue to hear stories of fraud, waste, and abuse within Minnesota's state agencies. If you're a current or former employee of the State of Minnesota and have witnessed wasteful, fraudulent, or unethical behavior in your workplace, **Senate Republicans want to hear from you.**

Weeding out abusive or fraudulent behavior is critical for improving the service provided to taxpayers by their government. Use the button below to confidentially send your comments to Senate Majority Leader Paul Gazelka.

Share your story

[Click here to submit your feedback](#)

What happens to my submission?

What happens to my submission?

State government employee whistleblower portal

All submissions are sent directly to the Office of Senate Majority Leader Paul Gazelka and his staff. In the event a submission is shared with legislative staff or other members of the legislature, names and other personally-identifying information will be redacted to ensure complete privacy and anonymity. **Submissions will NOT be made public.**

We acknowledge the sensitivity of reporting wrongdoing, unethical behavior, and/or violations of policy or law. All comments shared through this website will be treated with the highest level of confidentiality and privacy. All submissions are for informational purposes only. The nature of your submission, as well as your identity, will NOT be disclosed without your express consent. Your submission will NOT be public information, nor is it subject to the Minnesota Data Practices Act. Due to the volume of comments, we cannot guarantee a response to every submission.

Your comments are essential to finding a solution to government waste, fraud, and abuse.



Share your story

Tell us about your experience

State

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Minnesota and have witnessed

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portal

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