

## Pandora's Secrecy Box Part 1: The Trail of the \$100 Tacos

by Patrick Monette-Shaw

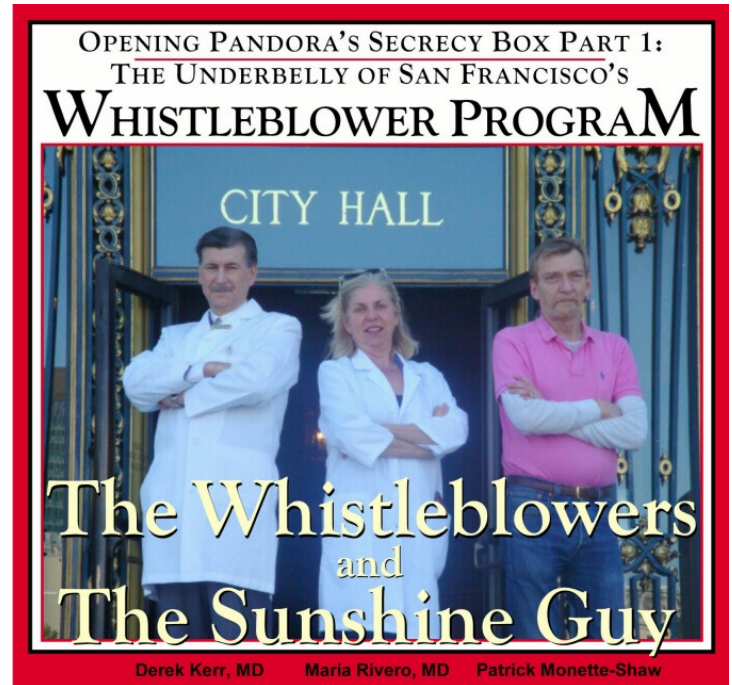
When Laguna Honda's patient gift fund's questionable expenditures became public, no one would have guessed that it would become a domino that pushed forward an investigation into San Francisco's troubled whistleblower program.

It may toil far from the attention of City Hall, but as ABC TV Channel 7's I-Team reported on May 25, whistleblowers are an important part of making our government work.

### Closing Pandora's Secrecy Box

The I-Team's [report](#) noted San Francisco whistleblowers face increasing retaliation, although it is prohibited by City law. It is the kind of mismanagement that can draw the attention of the city's Civil Grand Jury.

During the six-year period between fiscal years 2004-05 and 2009-10 (the last year data was available), the City received 1,963 whistleblower complaints. The Whistleblower Program's [annual report](#) claims it "facilitated" investigation of 45.1% (174) of the 386 complaints received in FY 09-10, down from facilitating 50.1% of the 465 complaints the program received in FY 08-09.



But the Controller's Whistleblower Program won't release data about how many of the 1,963 complaints received since 2004, or how many of the 174 complaints it "facilitated investigating" in 2010, were actually investigated by the Whistleblower Program.

That the Ethics Commission and the whistleblower program never found in favor of a single whistleblower during the past decade is preposterous. This may be one symptom the whistleblower program isn't working, either as a method to limit the City's "risk" of claims liability, or as a tool to rout City government of waste and fraud.

Rather than investigate complaints themselves, the city's Whistleblower office farms out complaints to the City departments accused of wrongdoing for their "investigation."

The I-Team reported the Ethics Commission couldn't find a single case where it filed against an employer for retaliation against employees. This is despite the fact that retaliation cases can be painfully obvious, as the I-Team investigation uncovered.

Just ask Drs. Maria Rivero and Derk Kerr, two former doctors at Laguna Honda Hospital. They filed a whistleblower complaint about LHH's patient gift fund on March 2, 2010. Ultimately, they paid the price of facing what is arguably retaliation.

### Betrayal of the Public Trust

When Kerr and Rivero asked the Whistleblower Program in an e-mail on May 3, 2011 to provide the policy allowing "high-risk" complaints to be referred for investigation by other City departments, program staff claimed

in an e-mail response on May 5 that San Francisco's Campaign and Government Code section 4.107(b) allows the Controller to refer whistleblower complaints to other City departments for investigation.

But their overbroad assertion ignores the wording of the law, since section 4.107(b) provides very limited exceptions permitting referral for investigation to other City departments.

"Our gift fund complaint fell squarely within the Controller's jurisdiction because we reported financial irregularities and specifically requested an audit," says Dr. Kerr. "Ethics had no jurisdiction over the matter." Section 4.107(c) specifically provides that in cases not covered by section 4.107(b), the City Controller shall receive, track, and *investigate* complaints made or referred to the Whistleblower Program. Section 4.107(c) doesn't grant this authority to other City departments.

The Controller's whistleblower program annual report states that while the Whistleblower Program "may assume a lead role in conducting certain investigations," the "majority of investigations are coordinated in collaboration with management of the department associated with the complaint."

In practice, this means City departments investigating themselves can bury complaints in a veil of secrecy with the Whistleblower Program staff's help.

When the Whistleblower office referred the complaint to the Ethics Commission, six months was wasted and restitution of the \$350,000 to LHH's patient gift fund was delayed for over nine months, before the Controller's audit of the gift fund was finally completed. Between March and September 2010, the City Controller's Whistleblower Program and the Ethics Commission quibbled over which agency, or both, would investigate the gift fund complaint. The long-delayed audit of the patient gift fund by the Controller's City Services Auditor program began in September, but the audit report wasn't released until November 22, 2010, ordering wrongful expenditures restored for the benefit of patients as the fund was created to do.

### **Who's Policing the Auditor — and Its Underbelly?**

The secrecy of San Francisco's whistleblower program records obstructs oversight, an ironic result for a program voters wanted in order to improve oversight and accountability.

Rivero's and Kerr's whistleblower complaint alleged misuse of private donations to LHH's patient gift fund were wrongly spent on staff aggrandizement. But while this was the crux of their complaint, the investigation their complaint prompted revealed that there were other violations. It turned out the restricted-use patient funds were also spent on capital improvement projects at LHH.

The Controller's [audit report](#) of Laguna Honda's patient gift fund issued on November 22, 2010 notes on page 7 that in FY 06–07, \$176,481 was transferred from the gift fund to the hospital's capital project fund. In the five years between FY 06–07 and FY 10–11 the City never explained why patient funds were transferred for capital projects, and the City has refused to date to specify what capital projects were involved.

The audit report noted the \$176,481 was returned to the patient gift fund, along with interest on the diverted funds.

The misrouted capital funds would not have been corrected without Kerr's and Rivero's whistleblower complaint.

Both wrongful expenditures are prohibited by the City's administrative Code governing use of patient funds.

### **\$100 Worth of Tacos for Fiestas Patrias**

When they filed their whistleblower complaint in March 2010, the doctors couldn't realize they were setting off a chain of events that would help also reveal how whistleblower complaints are handled in San Francisco. They also did not expect that they would join a list of other city whistleblowers who faced retaliation.

It started with a classic example of mismanagement over a small issue – reimbursement to Dr. Rivero of the \$100 she spent toward tacos for LHH’s Spanish Focus wards in September 2009. The taco luncheon was to celebrate Latin America’s Independence Day — Fiestas Patrias — on a ward where the majority of patients have various forms of dementia.

Their complaint started a money trail that led to the commingling of public and private funds by the City of San Francisco, Laguna Honda Hospital itself, and two non-profit organizations — Laguna Honda Volunteers, Inc. and the Laguna Honda Foundation, which has yet to be explained.

The commingling of funds included diversion of \$176,481 in donations for patients on the unnamed capital project(s), the use of \$375,000 in donations made to one non-profit intended to benefit patients but used to hire staff in a second non-profit organization, and other questionable expenditures.

Three or more scandals, all for the want of \$100 for taco’s for poor people with dementias.

Although San Francisco voters approved a ballot measure in 2003 to expand the City’s whistleblower program to expose government waste, fraud, and inefficiencies, and misuse of City government funds, the San Francisco Whistleblower Program has evolved into a program of secrecy. It argues its policy is based on confidentiality, not secrecy, but the result is the same.

Tracking the steps in the doctor’s complaint brought to light the inner workings of the Whistleblower program.

On December 3, Tonia Lediju, the City Controller’s Director of Audits who also administers the Controller’s Whistleblower Program, admitted the Whistleblower Program had **not** conducted an investigation of the Kerr and Rivero gift fund whistleblower complaint, the job that voters thought it was giving to the program.

When voter’s passed Proposition C in 2003 creating the City Services Auditor function and the Controller’s whistleblower program, San Francisco City Charter Section F1.107(a)(4) was amended to require the Controller to investigate whistleblower complaints, unless the Ethics Commission states in writing that a Controller’s investigation would substantially impede or delay the Ethics Commission’s own investigation of whistleblower complaints.

“Although we requested the Ethics Commission’s ‘drop-the-case’ letter, both Ethics and the City Controller refused to disclose it,” Dr. Kerr says.

Dr. Rivero testified at a Sunshine Task Force hearing on May 18, “We are asking the Task Force to support the release of any documents that show the Ethics Commission was actively investigating our complaint during the nine months in which we both lost our jobs,” a reference to the whistleblower retaliation she and Dr. Kerr endured as former doctors at Laguna Honda Hospital.

What started out as a model whistleblower program with whistleblower protections, at least in this case, seems to have provided the city with an excuse to keep mismanagement and misappropriation of funds from public view, avoid accountability for officials, and instead punish city workers who raise troublesome questions for managers.

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This article first appeared on [www.CitiReport.com](http://www.CitiReport.com), a San Francisco web site subtitled “Pollitics • Ethics • Money.”