



Florida Inspectors General

Melinda M. Miguel  
Chief Inspector General

# The Whistle-blower's Act



## Enhancing Public Trust in Government



## Overview

Chief Inspector General Responsibilities

Agency Inspectors General Responsibilities

Main sections of the Whistle-blower's Statute

Whistle-blower Process Flow

Whistle-blower Determinations

Questions and Answers



# Overview

---

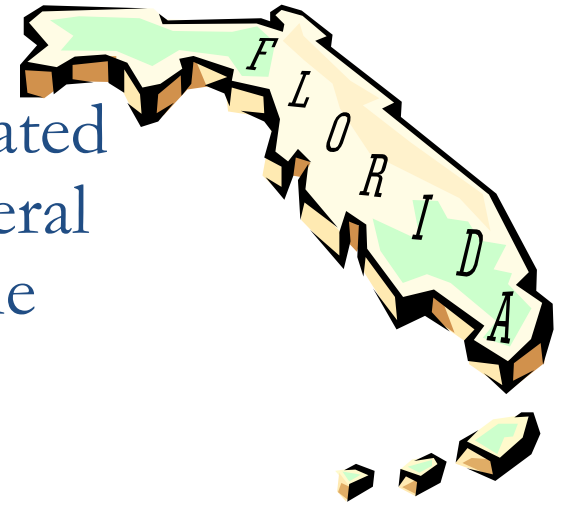
## Chief Inspector General Responsibilities



# Florida Chief Inspector General

---

- Section 14.32, Florida Statutes (F.S.) created the Office of the Chief Inspector General (CIG) within the Executive Office of the Governor.
- Under section 14.32, F.S. (2), the CIG shall:
  - (f) Coordinate the activities of the Whistle-blower's Act pursuant to Chapter 112, F.S. and maintain the whistle-blower's hotline.

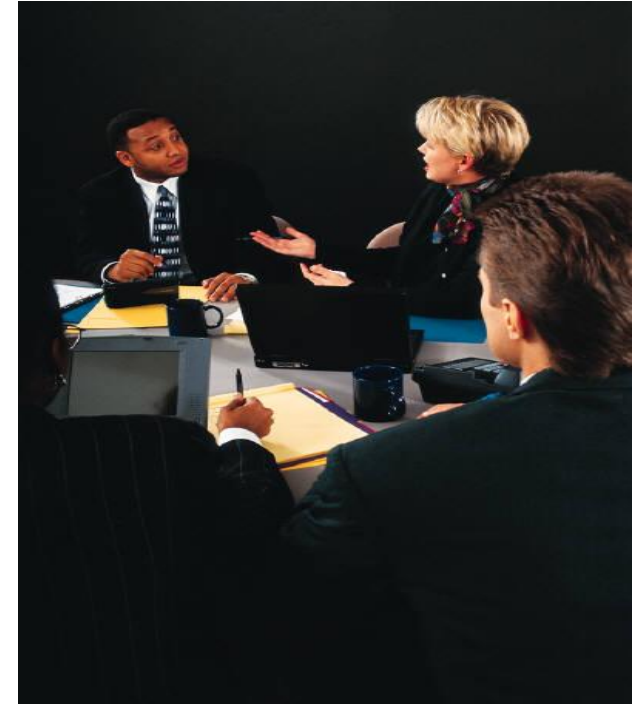




# Florida Chief Inspector General

---

Section 14.32, F.S. (i):  
The CIG shall act as liaison  
and monitor the activities of  
the inspectors general in the  
agencies under the Governor's  
jurisdiction.





# Overview

---

## Agency Inspectors General Responsibilities



# IG Responsibilities

---

Authorized under section 20.055, F.S., the Office of Inspector General (OIG) is established in each state agency to provide a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government.





# IG Responsibilities under Section 20.055, F.S.

---

(6) In carrying out the investigative duties and responsibilities, each inspector general shall...

(a) Receive complaints and coordinate all activities of the agency as required by the Whistleblower's Act pursuant to Sections 112.3187 – 112.31895, F.S.





# Overview

---

**Main Sections of the Whistle-blower's Statute**



# Main Sections of the Whistle-blower's Statute

---

112.3187    Retaliation Protection

112.3188    Confidentiality

112.3189    Complaint Investigative Procedures

112.31895    Retaliation Investigative Procedures



# s. 112.3187, F.S., Retaliation Protection

---

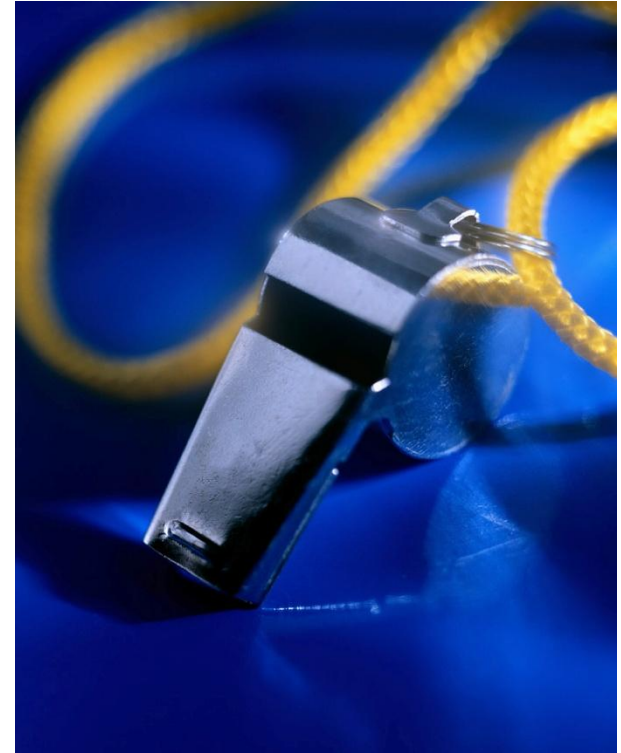
- Legislative Intent
- Key definitions: employee; independent contractor; adverse personnel action
- Actions prohibited
- Nature of information disclosed
- To whom information is disclosed
- Employees and persons protected
- Remedies
- Relief, defenses and existing rights



# Sections 112.3187-112.31895, F.S. *“Whistle-blower’s Act”*

---

It is the intent of the Legislature to prevent agencies or independent (agency) contractors from taking retaliatory action against an employee or independent contractor who reports violations of law which creates a substantial or specific danger to the public’s health, safety, or welfare.



Main sections of the Whistle-blower statute



# Sections 112.3187-112.31895, F.S. *“Whistle-blower’s Act”*

---

It is further the intent of the Legislature to prevent agencies or independent (agency) contractors from taking retaliatory action against any person who discloses information alleging improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee.



# s. 112.3187, F.S., Retaliation Protection

---

## Key Definitions

**“Employee”** means a person who performs services for, and under the control and direction of, or contracts with, an agency or independent contractor for wages or other remuneration.

**“Independent contractor”** means a person, other than an agency, engaged in any business and who enters into a contract, including a provider agreement, with an agency.

**Sub contractors are not covered under this definition.**



# s. 112.3187, F.S., Retaliation Protection

---

## Key Definitions (continued)

**“Adverse personnel action”** means the discharge, suspension, transfer, or demotion of any employee or the withholding of bonuses, the reduction in salary or benefits, or any other adverse action taken against an employee within the terms and conditions of employment by an agency or independent contractor.



# s. 112.3187, F.S., Retaliation Protection

---

## Actions Prohibited

An agency or independent contractor **shall not**:

- Dismiss, discipline, or take any other adverse personnel action against an employee for disclosing information pursuant to the provisions of this section.
- Take any adverse action that affects the rights or interests of a person in retaliation for the person's disclosure of information under this section.



s. 112.3187, F.S.,

## Retaliation Protection

---

### Nature of Information Disclosed

- Any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a substantial and specific danger to the public's health, safety, or welfare.
- Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency or independent contractor.



# Retaliation Protection

---

## To Whom Information Is Disclosed

Any agency or federal government entity having the authority to investigate, police, manage, or otherwise remedy the violation or act, including, but not limited to:

- **Chief Inspector General**
- **Agency Inspector General or the Employee designated as agency Inspector General**
- **The Florida Commission on Human Relations**
- **The Whistle-blower's Hotline**

For concerns about local government entities, information must be disclosed to a chief executive officer or other appropriate local official.



# Retaliation Protection

---

## **Employees and Persons Protected include those:**

- Who disclose information on their own initiative in a written and signed complaint; or
- Who are requested to participate in an investigation, hearing, or other inquiry; or
- Who refuse to participate in any adverse action prohibited by this section; or
- Who file any written complaint to their supervisory officials; or
- Who submit a complaint to the CIG, the Agency Inspector General, Whistle-blower's Hotline or to the Florida Commission on Human Relations.



# Retaliation Protection

---

## Remedies

- Employees of or applicants for employment with state agency file with Florida Commission on Human Relations
- Local public employees file with appropriate local governmental authority
- All others (independent contract employees), exhaust contractual or administrative remedies, file in court



# Retaliation Protection

---

## Relief, Defenses and Existing Rights

In any action brought under this section, the relief must include the following:

- Reinstatement of the employee to the same position held before the adverse action was commenced, or to an equivalent position or reasonable front pay as alternative relief.
- Reinstatement of the employee's full fringe benefits and seniority rights, as appropriate.



# Retaliation Protection

---

## Relief, Defenses and Existing Rights (continued)

- Compensation, if appropriate, for lost wages, benefits, or other lost remuneration caused by the adverse action.
- Payment of reasonable costs, including attorney's fees, to a substantially prevailing employee, or to the prevailing employer if the employee filed a frivolous action in bad faith.



# Retaliation Protection

---

## Relief, Defenses and Existing Rights (continued)

- Issuance of an injunction, if appropriate, by a court of competent jurisdiction.
- Temporary reinstatement to the employee's former position or to an equivalent position, pending the final outcome on the complaint.



# Retaliation Protection

---

## Relief, Defenses and Existing Rights (continued)

- **Defenses** - It shall be an affirmative defense to any action brought pursuant to this section that the adverse action was predicated upon grounds other than, and would have been taken absent, the employee's or person's exercise of rights protected by this section.
- **Existing Rights** - Sections 112.3187-112.31895 do not diminish the rights, privileges, or remedies of an employee under any other law or rule or under any collective bargaining agreement or employment contract; however, the election of remedies in s. 447.401 also applies to whistle-blower actions.



# Main Sections of the Whistle-blower's Statute

---

112.3187 Retaliation Protection

**112.3188 Confidentiality**

112.3189 Complaint Investigative Procedures

112.31895 Retaliation Investigative Procedures



# s. 112.3188, F.S., Confidentiality

---

- Individual Confidentiality (Name or Identity)
- Information Confidentiality (Produced or Derived)
- Exceptions (Waiver)
- When a Report Becomes Public
- Penalty for Breach



# Confidentiality

---

## Individual Confidentiality – Name or Identity

The name or identity of any individual who discloses in good faith to the Chief Inspector General or an agency inspector general, a local chief executive officer, or other appropriate local official information that meets criteria may not be disclosed to anyone other than a member of the Chief Inspector General's, agency inspector general's, internal auditor's, local chief executive officer's, or other appropriate local official's staff.



# Confidentiality

---

## Information Confidentiality – Produced or Derived

Except as specifically authorized, all information received by the Chief Inspector General or an agency inspector general or information produced or derived from fact-finding or other investigations conducted by the Florida Commission on Human Relations or the Department of Law Enforcement is confidential and exempt from public records if the information is being received or derived from allegations as set forth in paragraph (1)(a) or paragraph (1)(b), and an investigation is active.



# Confidentiality

## Exceptions - Waivers

The name or identity of the whistle-blower may not be disclosed without the written consent of the individual, unless the Chief Inspector General, internal auditor, agency inspector general, local chief executive officer, or other appropriate local official determines that: the disclosure of the individual's identity is necessary to prevent a substantial and specific danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime; or the disclosure is unavoidable and absolutely necessary during the course of the audit, evaluation, or investigation.



# s. 112.3188, F.S., Confidentiality

---

## Exceptions – Waivers (continued)

Information disclosed under this subsection may be disclosed only to persons who are in a position to prevent the danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime based on the disclosed information.



# Confidentiality

---

## When A Report Becomes Public

Except for active criminal intelligence or criminal investigative information, and except as otherwise provided in this section, all information obtained pursuant to this subsection shall become available to the public when the investigation is closed or ceases to be active. An investigation is closed or ceases to be active when the final report has been sent by the Chief Inspector General to the recipients specified under Florida Statute.



# s. 112.3188, F.S., Confidentiality

---

## Penalty for Breach

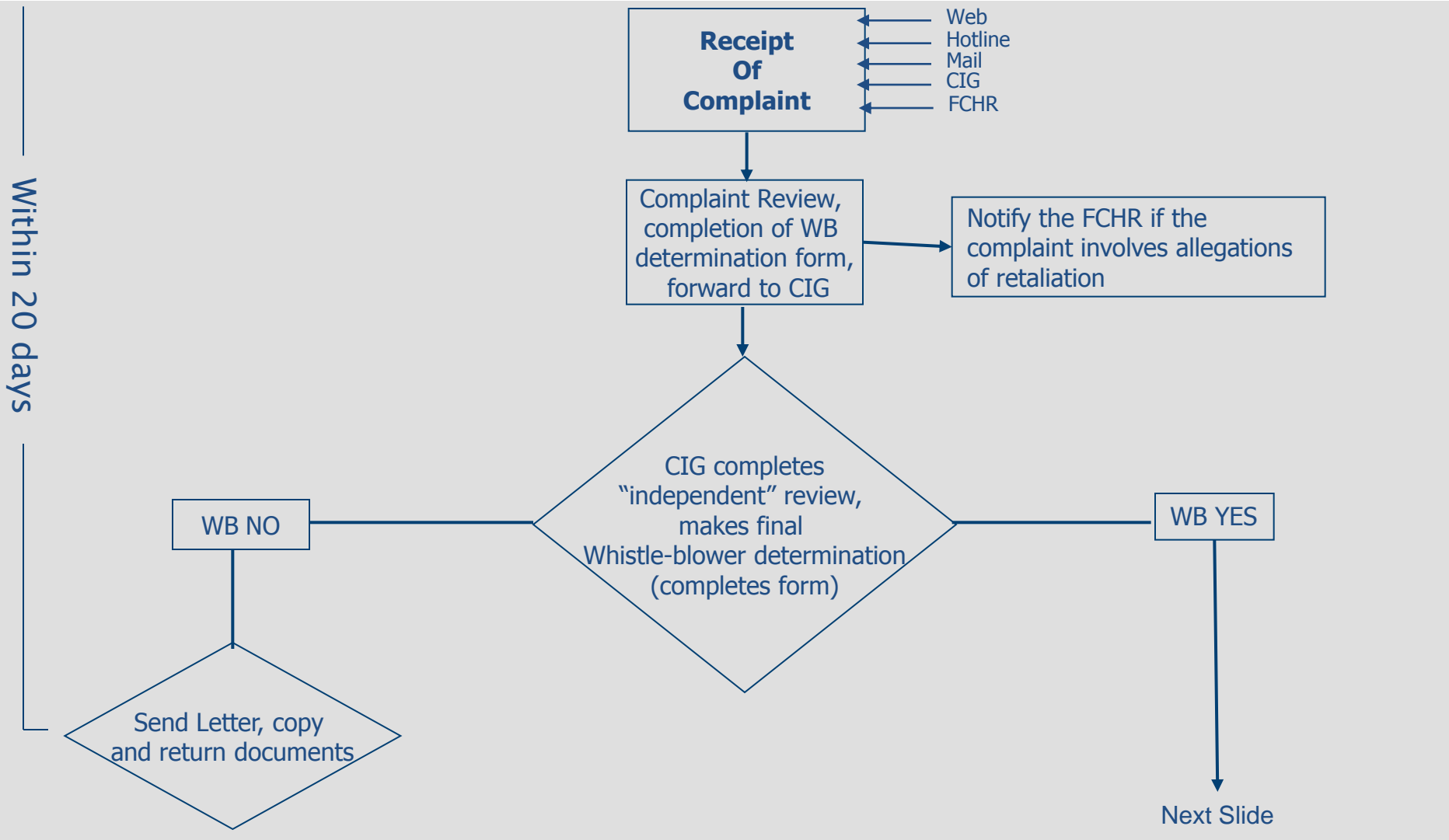
Any person who willfully and knowingly discloses information or records made confidential under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s.775.083.

# Overview

---

## Whistle-blower Process Flow

# Whistle-blower Work Flow by IG



# YES on Whistle-blower and NO on Investigate

Within 10 (additional) days



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.

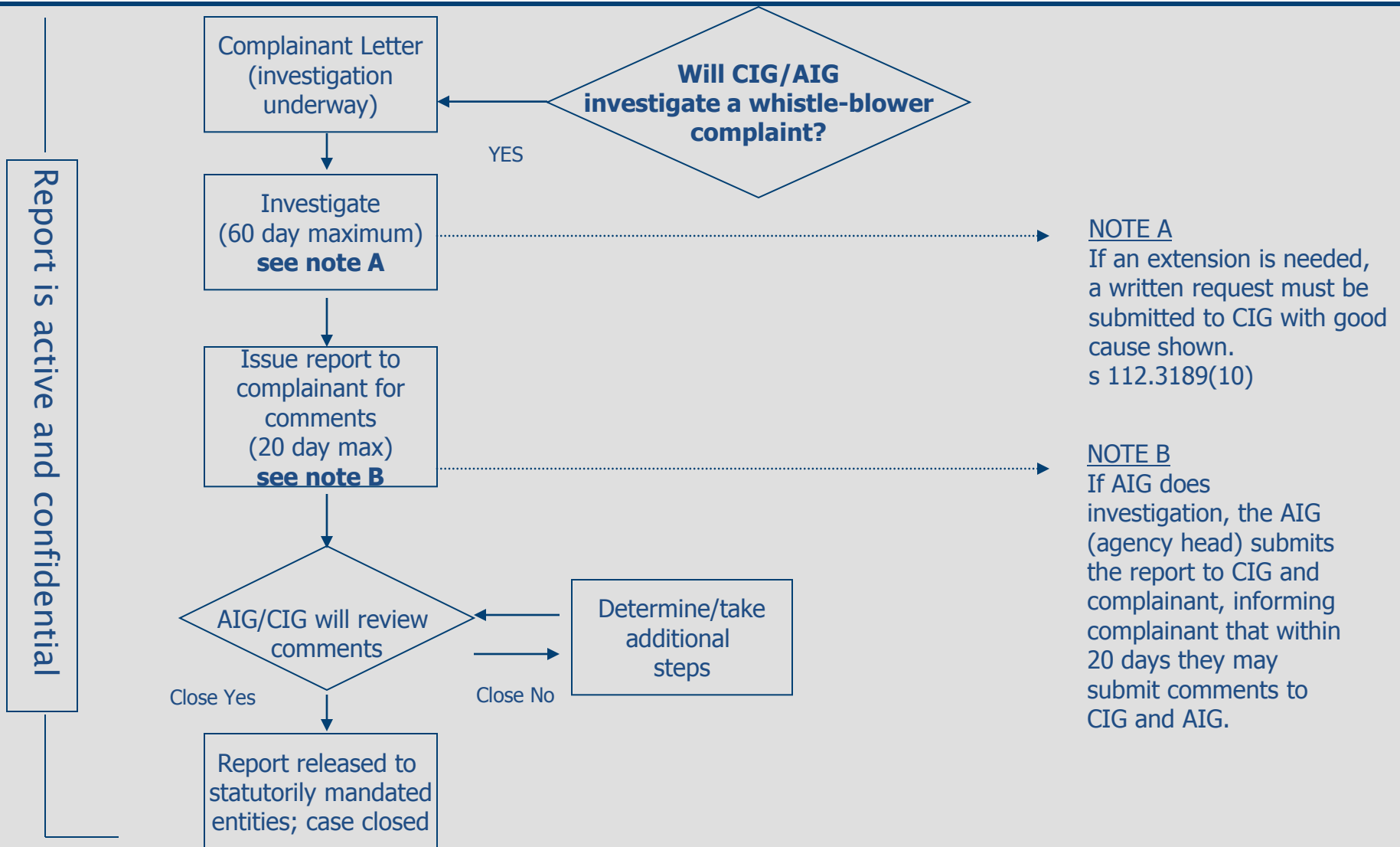
5. Whether another agency may be conducting an investigation and whether any investigation under this section could be duplicative.

6. The time that has elapsed between the alleged event and the disclosure of the information.

No

**Complainant Letter  
(No investigation)**

# YES on Whistle-blower and YES on Investigate





# EXERCISE

---

Do The Allegations Rise To  
Whistle-blower Status?



# Conclusion

---

**Chief Inspector General Responsibilities**

**Agency Inspectors General Responsibilities**

**Main sections of the Whistle-blower Statute**

**Whistle-blower Process Flow**

**Whistle-blower Determinations**

**Questions and Answers**



# QUESTIONS ? ? ?

---

**THANK YOU FOR PARTICIPATING**

**PRESENTED BY:**

**Deputy Chief Inspector General Dawn Case  
Office of the Chief Inspector General**

*July 2012*

